

***United States Court of Appeals
for the Second Circuit***



APPENDIX

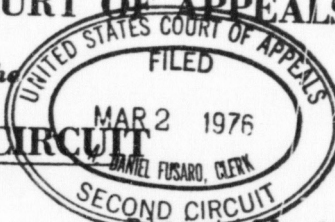
ORIGINAL
WITH PROOF
OF SERVICE

75-7646

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT



75-7668
75-6132
75-6140
75-7699
76-7011

GEORGE RIOS, et al,

-against-

ENTERPRISE ASSOCIATION STEAMFITTERS LOCAL 638 OF U.A. et al,

Defendants-Appellees,

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff-Appellant,

-against-

ENTERPRISE ASSOCIATION STEAMFITTERS LOCAL 638 OF U.A., et al.

Defendants-Appellees.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

Volume I of II pp. 1 - 345

DELSON & GORDON

Attorneys for Defendant-Appellee Enterprise Association
Steamfitters Local 638 of U.A. and Defendants-Appellees Union
Members, Joint Steamfitting Apprenticeship Committee
230 Park Avenue, New York, N. Y. 10017

BREED, ABBOTT & MORGAN

Attorneys for Defendant-Appellee Mechanical Contractors
Association of New York, Inc. and Defendant-Appellees Employer
Members, Joint Steamfitting Apprenticeship Committee
1 Chase Manhattan Plaza, New York, N. Y. 10005

MARILYN R. WALTER & ROBERT P. ROBERTS

Attorneys for Plaintiffs-Appellants George Rios, et al
423 West 118th Street, New York, N. Y. 10027

TUFO, JOHNSTON & ALLEGAERT

Attorneys for Plaintiffs-Appellants George Rios, et al
645 Madison Avenue, New York, N. Y. 10022

THOMAS J. CAHILL

United States Attorney - Attorney for Plaintiff-Appellant
Equal Employment Opportunity Commission
1 St. Andrews Plaza, New York, N. Y. 10007

(5333)

COUNSEL PRESS. INC., 55 West 42nd Street, New York, N.Y. 10036 • PE 6-8460

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A-1

1/72 RETURNED TO JAMES B. SAL... FOR ALL PURPOSES.
CIVIL DOCKET

UNITED STATES DISTRICT COURT

D. C. Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

GEORGE RIOS,
EUGENE C. JENKINS,
ERIC O. LEWIS AND
WYLLIE B. RUTLEDGE

For plaintiff:

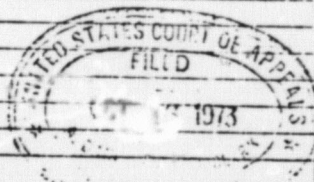
DENNIS R. YEAGER, ESQ.
401 West 117th St.
N.Y.C.N.Y. 10027

AGAINST.

ENTERPRISE ASSOCIATION STEAMFITTERS LOCAL UNION
#638 of U.S..
MECHANICAL CONTRACTORS ASSOCIATION OF NEW YORK, INC
AND THE JOINT STRAIGHTENING APPRENTICESHIP COMMITTEE
OF THE STEAMFITTERS' INDUSTRY EDUCATIONAL FUND,

For defendant:

Peter Kaiser
1440 Broadway, N.Y. 10018 LO 5-5040
Breed, Abbott & Morgan (for Mechanical Con-
tractors Assn. of N.Y., etc.)
1 Chase Manhattan Plaza, N.Y. 10005 944-44



STATISTICAL RECORD

COSTS

DATE

NAME OR
RECEIPT NO.

REC.

DISB.

J.S. 5 mailed X

Clerk

J.S. 6 mailed ✓

Marshal

Basis of Action:

SEEK INJUNCTIVE RELIEF &
PAY OF UNCERTAIN AMOUNT.

Docket fee

Witness fees

Action arose at:

Depositions

DOCKET ENTRIES

A-2

GEORGE RICS, ET-AL VS. ENTERPRISE ASSOCIATION STEAMFITTERS LOCAL UNION # 638 etc; ET-AL

PAGE

71 CIV. 84

DATE	PROCEEDINGS
Feb 26-71	Filed Complaint. Issued Summons.
Mar. 1-71	Filed summons and affidavit of service. Served Enterprise Association Steamfitters Local Union #638 of U.A. by James Mulligan, Sec. Treas. on 2/26/71; Served Mechanical Contractors Association of New York, Inc. by Joseph Hopkins, Secretary, on 2/26/71.; Served Joint Steamfitting Apprenticeship Committee of the Steamfitters' Industry Educational Fund by Howard A. Kerr on 2/26/71.
Mar. 1-71	Filed Order to Show Cause re: Pre. Inj. Ret. 3/1/71.
Mar. 1-71	Filed Memorandum of Law in support of pliffs' motion for pre. inj.
Mar. 9, 71	Filed pliffs' affidavit for an order permitting pliffs' to take deposition of deft.
Mar. 9, 71	Filed pliffs' notice to take deposition of deft.
Mar. 9, 71	Filed stip and order that the deposition of the deft may be taken on 3-12-71
Mar. 15-71	Before Frankel, J. Hearing on motion for preliminary injunction, and concluded.
Mar. 24-71	Filed Affidavit in opposition to Order to Show Cause.
Mar. 24-71	Filed Affidavit of Howard A. Kerr in opposition to order to show cause.
Mar. 24-71	Filed Affidavit of Dennis A. Macger in support of Pliffs' motion for pre. inj.
Mar. 24-71	Filed Memorandum on behalf of Mechanical Contractors Assn. and Employer member of Apprenticeship Committee in opposition to pliffs' motion for pre. inj.
Mar. 24-71	Filed Memorandum submitted on behalf of Enterprise Assn., Steamfitters Local 638, etc. in opposition to pliffs' motion for pre. inj.
Mar. 24-71	Filed OPINION #37150. Frankel, J. The preliminary relief the plaintiffs seek will be granted. The most basic and decisive factor against Rutledge on the present motion is the weakness of his case on the merits, etc. For the reasons stated, the motion of pliff. Rutledge will be denied. A preliminary injunction will issue in favor of pliffs. Rics, Jenkins and Lewis restraining defendant Union from denying them union membership on terms and conditions, and with rights, privileges and responsibilities, equal to those of all other members enjoying the status of full journeymen, without regard to race or national origin. SETTLE ORDER ON NOTICE. (mailed notice).
Mar. 23, 71	Filed stip and order that time of defts, to Answer the complaint is extended to 4-3-71 Cannella J.
Apr. 8-71	Filed ANSWER of Enterprise Association Steamfitters Local No. 638 of U.S. and the Union Members of the Joint Steamfitting Apprenticeship Committee to complaint.
Apr. 9-71	Filed Interrogatories to deft. Enterprise Assn. Steamfitters Local Union #638 of U.A.
Apr. 9-71	Filed Interrogatories to deft. Joint Steamfitting Apprenticeship Committee of the Steamfitters' Industry Educational Fund.
Apr. 9-71	Filed Interrogatories to deft. Mechanical Contractors Association of New York, Inc.
Apr. 9-71	Filed ANSWER of Mechanical Contractors Assn. of New York and Employer Members of the Joint Steamfitting Apprenticeship Committee of the Steamfitters' Industry Educational Fund, to complaint.
Apr. 16-71	Filed defts' Memorandum in support of proposed order.
Apr. 16-71	Filed pliffs' Memorandum in support of proposed order.
Apr. 16-71	Filed ORDER that plaintiffs Rics, Jenkins and Lewis be admitted to full journeyman membership status in the Building and Construction Trades Branch of the Union with rights, privileges and responsibilities, etc., without payment of any initiation fee at this time, but reserving for final decision in this action the question whether such payment shall be required as a condition of continued membership, etc.; Ordered that the motion of pliff. Rutledge be and hereby is denied. So ordered. Frankel, J. (mailed notice).
Apr. 26-71	Filed pliffs' Notice of Motion. Re: Class Action. Ret. 5-4-71
Apr. 26-71	Filed Memorandum of law in support of pliffs' motion.
Apr. 26-71	Filed pliffs' affidavits and Memorandum of law in support of motion.
Apr. 26-71	Filed Memorandum of law in support of pliffs' motion for an assignment.
Apr. 26-71	Filed pliffs' Notice of Motion. Re: Assignment of a Judge Ret. 4-16-71

Continued on next page.

DOCKET ENTRIES

A-3

RE REFERRED TO JUDGE BONSAL For

11/11/71

71 Civil 847 George Rice et al vs. Enterprise Association Steamfitters Local Union

PAGE 3

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date of Judgment
Apr. 26-71	Filed MEMO. END. on motion filed 4-26-71 Pltffs' motion, not opposed by defts, for assignment of this case to one judge under general rule 2 is denied. It may not be reargued until the six present vacancies on the bench have been filled. So Ordered. Sugarman Ch. J. -mailed notice.	
May 2-71	Filed stipulation that the motion for class action be adjourned from 5-1-71 to 5-11-71	
May 7-71	Filed Affidavit in opposition to motion to maintain class action.	
May 7-71	Filed Memorandum submitted on behalf of Enterprise Assn., Steamfitters Local Union No. 638 of U.A., etc.	
May 7-71	Filed Memorandum on rule 23(c) motion on behalf of defts'	
May 11-71	Filed stip and order that time of defts. to respond, object to the requirement for answers to interrogs. by pltffs upon each of the defts is extended to 6-10-71 Tenney J.	
Jun 16-71	Filed Transcript of Record of Proceedings of Mar. 15, 1971.	
Jul 16-71	Filed Answers to Plaintiffs' Interrogs. to deft. Joint Steamfitting Apprenticeship Committee of the Steamfitters' Industry Educational Fund.	
Jul 16-71	Filed Answers to Plaintiffs' Interrogs. to deft. Mechanical Contractors Association of New York, Inc.	
Jul 26-71	Filed Notice of Deposition of Deft. Joint Steamfitting Apprenticeship Committee.	
Jul 26-71	Filed Notice of taking Deposition of deft. Mechanical Contractors Assn. of NY Inc.	
Jul 26-71	Filed Notice of taking Deposition of Deft. Enterprise Assn. Steamfitters Local 638.	
Aug 10-71	Filed OPINION #37844. Tenney, J. Plaintiffs' motion is granted to the extent indicated. SETTLE ORDER ON THREE DAYS' NOTICE. (mailed notice).	
Aug 24-71	Filed Order that this action be maintained as a class action pursuant to F.R.C.P. 23(a) and 23(f) (2) in behalf of two separate and distinct classes as indicated. Tenney J. -mailed notice.	
Sep. 2-71	Filed pltffs' affdvt. and notice of motion to compel answer Re; Interrogs. Ret. 9-9-71	
Sep. 2-71	Filed pltffs' Memorandum of law in support of motion to impose sanctions and to compel further answers to interrogs.	
Sep. 2-71	Filed E. Richard Larson, Certificate of Service, of Notice of Motion, etc.	
Oct. 16-71	Filed Plaintiffs' Second Interrogatories to Defendant Joint Steamfitting Apprenticeship Committee of the Steamfitters' Industry Educational Fund.	
Oct. 19-71	Filed Affidavit (of Peter Kaiser) in opposition to pltffs' motion.	
Oct. 19-71	Filed Further Answers to Written Interrogatories.	
Oct. 19-71	Filed Report of U. S. Magistrate Harold J. Raby.	
Nov. 1-71	Filed Opinion # 37987--Motion to compel further answers to various interrogs. was referred by the Court to Magistrate Harold J. Raby. Instead of denying the relief requested entirely, as recommended by the learned Magistrate, I will direct that the Union use its good officers to make available the records, etc. This should be done promptly and a report made to the Court within ten days. In all other respects the report of the Magistrate is accepted and confirmed. Gurfein, J. M/N	
Nov. 22-71	Filed Motion of Deposition.	
Nov. 23-71	Filed stipulation and order extending deft. Joint Steamfitting Apprenticeship Committee's time to answer or object to Pltffs' Second Interrogs. to 12/2/71. So ordered. Bonsal, J.	
Dec. 3-71	Filed OPINION #38074. Gurfein, J. The plaintiffs should be provided by the defendants with the information described. (mailed notice).	
Dec. 8-71	Filed stip and order that the time for deft. Joint Steamfitting Apprenticeship Committee of the Steamfitters' Industry Educational Fund, to answer pltffs' Second Interrogs. of said deft. is extended from 12-2-71 to 12-9-71. Ryan, J.	

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DOCKET ENTRIES

A-4

71 CIVIL 847 GEORGE RIOS, et al vs. ENTERPRISE ASSN., STEAMFITTERS LOCAL, etc.

Page

DATE	PROCEEDINGS	Date Judg.
Dec. 13-71	Filed Deft Joint Steamfittering Apprenticeship Committee of the Steamfitters, Answers to pliffs' second interrog.	
MAR 13-72	Filed Deft. motion for summary judgment, dated 1/14/72 to 4/11/72.	
MAR 27-72	Filed Charge of Notice for Dennis R. Yeager, E. Richard Larson, & Mayer G. Freed to: 423 West 120th St. NYC.	
JUN 7-72	Filed Notice of Motion, re: Rule 2 Judge.	
JUN 7-72	Filed Order referring this action to Hon. Dudley B. Bonsal for ALL purposes. Edelstein, Ch. J. (mailed notice).	
OCT. 11-72	Filed Plaintiffs' First Request for Admissions to Deft. Enterprise Association, Local Union 638 of U.A.	
OCT. 20-72	Filed affidavit of M.R. Walter of mailing deposition on attys for deff.	
OCT. 20-72	Filed pliff's notice to take deposition of Dennis Derryck on 10-30-72.	
NOV. 1-72	Filed deft's response to request for admissions.	
NOV. 6-72	Filed pliff's notice to produce.	
NOV. 20-72	Filed deft's Enterprise Association, Local Union NO 638 further answers to interrog.	
DEC. 18-72	Filed deft's Enterprise Association further response to request for admissions.	
DEC. 14-72	Filed transcript of record of proceedings, dated 11-21-72 (Filed in 71 Civ 2877)	
JAN. 15-73	Before Bonsal, J. Non-Jury trial begun.	
JAN. 16-73	Trial continued.	
JAN. 17-73	" "	
JAN. 18-73	" "	
JAN. 19-73	" "	
JAN. 24-73	" "	
JAN. 26-73	" " and concluded. Decesion Reserved.	
APR. 19, 73	Filed transcript of proceedings dated 1/15 and 1/16, 17, 18, 1973.	
APR. 19, 73	Filed transcript of proceedings dated 1/19, 24, 26, 1973.	
JUN 21, 73	Filed OPINION # 32600: This is an action brought by the Atty. Gen. of the U.S. under Title VII of the Civil Rights Act of 1964 (Title VII") (42 U S C Sect. 2000e et seq.) pursuant to authority granted to the Atty. Gen. in that Act (42 U S C Sect 2000e-6(a)). *** MCA's motion to dismiss the Rios action as to it is denied. ***Pltfs. seek back pay on behalf of members of the class who can show they have been victims of past discriminatory practices, and for costs and attorneys' fees. These issues are reserved for later determination. The foregoing constitutes the Court's findings of fact and conclusions of law. The Order and Judgment, in the form reviewed with the attorneys for all parties, is being filed herewith. It is so Ordered. BONSAI, J. (n/m)	
JUN. 21, 73	Filed Order and JUDGMENT: Local 638 its officers, agents, employees and successors are permanently enjoined from engaging in any act or practice which has the purpose or effect of discriminating against any individual *** This court shall retain jurisdiction over this action to ensure compliance with the terms of this judgment and to enter such additional orders as may be necessary to effectuate equal employment opportunities. BONSAI, J. JUDGMENT ENTERED, Clark ENT. June 21, 1973.	
JUN. 25, 73	Filed Pltf. post trial memo.	
JUN. 25, 73	Filed Govt. post trial memo.	
JUN. 25, 73	Filed post trial memo on behalf of Enterprise Association, Local 638.	
JUN. 25, 73	Filed post trial reply memo on behalf of Local 638.	
JUN. 25, 73	Filed Govt. Reply brief.	
JUN. 25, 73	Filed pltf. reply memo of law.	
	Filed Transcript of record of proceedings, dated 11/26/73	

DOCKET ENTRIES

A-5

CIV. 847 GEORGE RIVS ET AL VS ENTERPRISE ASSN, STEAMFITTERS LOCAL, ETC. CIV. 847

Page -5-

DATE	PROCEEDINGS
Jul 20-73	Filed Notice of Appeal from Order & Judgment 6/21/73 (Mailed Copies)
Jul 20-73	Filed Undertaking for Costs of Appeal in the sum of \$250.00 by the Hartford Accident and Indemnity Co.
Jul 21-73	Filed Transcript of Record of Proceedings dated 6/1/73.
Jul 21-73	Filed " " " " " " 6/20/73
Jul 21-73	Filed " " " " " " 7/11/73
Aug 2-73	Filed Enterprise Association Steamfitters affidavit & show cause order to stay portions of order & judgment ent. 6-21-73 not before Bonsor J.
Aug 8-73	Filed Affidvt by Steven J. Glassman (for USA) in opposition to Order to Show Cause and Motion for Stay.
Aug 8-73	Filed Govt's Memorandum of Law in opposition to Proposed Order to Show Cause & Motion for Stay.
Aug 15-73	Filed Affidvt for Pltffs by Dennis R. Yeager.
Aug 15-73	Filed Affidvt by Dennis R. Yeager (for pltffs) of service by mail upon Breed, Abbott & Morgan, Nelson & Gordon & Paul J. Curran, U.S. Atty on 8/7/73, of Affidvt/Memorandum of Law in opposition to application for order to show cause and stay of parts of order and judgment pending appeal.
Aug 15-73	Filed Memorandum of law by pltffs in opposition to application for order to show cause and stay of parts of order and judgment pending appeal.
Aug 15-73	Filed Joint Designation of Exhibits.
Aug 15-73	Filed Deft. Mechanical Contractors Association of NY, Inc.'s Notice of Appeal from Order and Judgment filed 6/21/73 in favor of pltffs and against deft. Mechanical Contractors Assoc. of NY, Inc. with respect to so much of Order and Judgment which grants injunctive relief as against deft. Mechanical Contractors of NY, Inc. (Mailed Copies)
Aug 28-73	Filed Stip & Order extending time for deft. Enterprise Assoc. Steamfitters Local 638 of U.A. to transmit the Record on Appeal to Wednesday, 9/5/73. BATT, J.
Sep 13-73	Filed Stip & Order extending time for deft. Enterprise Assoc. Steamfitters Local 638 of U.A. to transmit Record on Appeal to Friday, 10/5/73. BONSAL, J.
Sep 20-73	Filed Affidvt by Dennis R. Yeager for Pltff.
Oct 2-73	Filed transcript of record of proceedings dated 10/21/72 10:33 am
Oct 2-73	Filed transcript of record of proceedings dated 10/29/72 2:03 pm
Oct 2-73	Filed transcript of record of proceedings dated 11/1/73
10-2-73	Filed Designation of the record to be transmitted to USCA by Nelson & Gordon with Affidavit of Service.
Oct 15-73	Filed stipulation designating documents not to be included on appeal.
Oct 15-73	Filed stipulation that the attached documents may be transmitted to USCA as part of the record on appeal.
Oct 15-73	Filed stipulation that the attached copies of missing documents may be transmitted to USCA as part of the record on appeal.

A TRUE COPY
RAYMOND E. BURCHARDT, CLERK

Raymond E. Burchardt
Raymond E. Burchardt

DOCKET ENTRIES

A-6

CIVIL DOCKET

JUDICIAL DISTRICT COURT

Jury demand

21 CIV. 2877

JUDGE GURFEIN AND OTHER DEFTS.

TITLE OF CASE

UNITED STATES OF AMERICA

VS

LOCAL 633 ENTERPRISE ASSOCIATION OF STEAM,
HOT WATER, HYDRAULIC SPRINKLERS,
etc.

defts'

METAL WORKERS INTERNATIONAL
ASSOCIATION, LOCAL UNION NO. 28.

3rd party pltf.

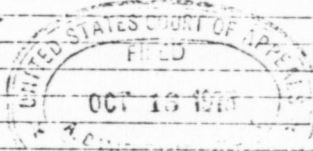
-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS.

3rd party deft.

~~UNITED METAL WORKERS LOCAL UNION NO. 28~~~~LOCAL APPRENTICESHIP COMMITTEE AND TRUST~~~~4th party pltf.~~

-against-



For defendant:

Doran, Calleran, O'Hara & Dunne
(for Local 580, Iron Workers, JAC-580;
Local 40, Iron Workers JAC 10-361)
1161 Franklin Ave.

Garden City, NY 11530 (516) CH 8-5757

FRIED KAISER

1440 Broadway

NYC 10013 (for defts Local 633

Proskauer Rose Goetz & Mendelsohn

(for Allied Bldg. Metal Indus.) 300 Park Ave.

Esq. Atty. Genl., State of N.Y. 10022 NY 8-7300

LOUIS J. LEFKOWITZ, (and for State Div. of HUMAN RIGHTS)

60 Centre St, 1 Chase Manhattan Plaza

NYC 10013 for deft. 3rd party deft. New York N.Y. 10005 (Mechanical Contractors Assn.

Menthal & Goldhaber (Sheet Metal Workers),

61 Court St., Brooklyn, NY 11201 237-9559

COHN, GLICKSTEIN, LURIE & OSTRIN

717 Fifth Ave., NYC 10022 (for Local 633)

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISR.
J.S. 5 mailed X	Clerk		1154		
J.S. 6 mailed	Marshal		1154		
Part of Action:	Docket fee		1154		
CIVIL RIGHTS. U.S.C. 42	Witness fees		1154		
Action arose at:	Depositions		1154		

DOCKET ENTRIES

A-7

U.S.A. VS. LOCAL 638 Enterprise Association of Steam, Hot
Water, etc.71 CIV. 2877
JUDGE BONSAI & JUDGE GURFEN

DATE	PROCEEDINGS	Judge
Jul 29-71	Filed complaint and issued summons.	
Jul 29-71	Filed stipulation and order extending deft Sheet Metal Workers International Association, Local Union No. 28's time to answer complaint to 8/1/71. So ordered. Frankel, J.	
Jul 29-71	Filed stipulation and order extending defendants time to answer complaint to 8/1/71. So ordered. Frankel, J.	
Jul 21-71	Filed stipulation and order extending deft. Allied Building Metal Industries, Inc.'s time to answer complaint to 8/11/71. So ordered. Frankel, J.	
Jul 23-71	Filed summons with marshal's ret. SERVED: Joint Steamfitters Apprenticeship Committee by Howard Kerr on 7/1/71 Local 638 Enterprise Assn. Steam and General Pipefitters by James Mulligan 7/6/71 Local 28 Sheet Metal International Assn. by C.O. Reilly on 7/1/71 Sheet Metal Workers Local 28 Joint Apprentice Committee by H. Musckert on 7/8/71 Local 580 Internatl. Assn. of Ornamental Ironworkers by Secy. on 7/2/71 Joint Apprentice Journeymen Educational Fund Ironworkers Local 580 by Bernard F. McMeeney on 7/2/71 Local 40 Internatl. Assn. of Structural Ironworkers by Edna Carroll on 7/13/71 Joint Apprenticeship Committee Ironworkers Locals 40 & 361 by Matt A. Steinberg on 7/7/71 Mechanical Contractors Assn. of N.Y.C. by Raymond Hopkins on 7/1/71 Sheet Metal Contractors Assn. of N.Y.C. Inc. by Wm. Hochberg on 7/2/71 Allied Building Metal Industries, Inc. by Harold Bassen on 7/2/71	
Jul 23-71	Filed ANSWER of defts. Local 580, Internatl. Assn. of Bridge, Structural and Ornamental Iron Workers; The Joint Apprentice-Journeymen Educational Fund, etc. etc. to complaint.	
Jul 23-71	Filed stipulation and order extending deft. Mechanical Contractors Assoc. of New York, Inc.'s time to answer complaint to 8/13/71. So ordered. Frankel, J.	
Jul 23-71	Filed stipulation and order extending deft. Sheet Metal Contractors Association of New York City, Inc.'s time to answer complaint to 8/12/71. So ordered. Frankel, J.	
Jul 27-71	Filed stipulation and order extending defendant Sheet Metal Workers Local 28 Joint Apprenticeship Committee's time to answer complaint to 8/12/71. So ordered. Lasker, J.	
Aug 4-71	Filed ANSWER of defts' to complaint	PK
Aug 4-71	Filed stip and order that the time for deft. Local 28, Sheet Metal International Assoc. to answer complaint is ext. from 8-4-71 to 8-17-71. So Ordered. Tenney, J.	
Aug 6-71	Filed pliffs interrogatories and request for documents.	
Aug 6-71	Filed deft. Local 638, Affidvt. and notice of motion Sever for Trial Ret. 8-17-71	
Aug 6-71	Filed deft. Local 28 Memorandum of law in support of motion to sever claims and a separate trial.	
Aug 5-71	Filed stipulation and order extending deft. Mechanical Contractors Assn. of N.Y.C. Inc.'s time to answer complaint to 9/13/71. So ordered. Tenney, J.	
Aug 9-71	Filed stipulation and order extending deft. Allied Building Metal Industries, Inc.'s time to answer complaint to 8/19/71. So ordered. Tenney, J.	
Aug 11-71	Filed stipulation and order extending deft. Sheet Metal Workers Local 28 Joint Apprenticeship Committee's time to answer complaint to 8/17/71. So ordered. Pierce, J.	
Aug 16-71	Filed Affidavit in opposition. to defendants motion.	
Aug 16-71	Filed Plaintiff's Memorandum in opposition to motion to sever.	
Aug 19-71	Filed ANSWER of Allied Building Metal Industries, Inc. to complaint.	
Aug 20-71	Filed MEMO. END. on motion papers filed 8/17/71. Motion denied following argument.	
	SUBMIT ORDER. Metley, J.	

FROM

DOCKET ENTRIES

A-8

JUDGE DONSALE & JUDGE GURFEIN

JUDGE GURFEIN

PROCEEDINGS

2-17-71 Filed deft. Local 40 Interrogs. to plff.
 2-17-71 Filed order that the said motion to sever be and it hereby is in
 all respects denied. Motley, J. M/T
 3-10-71 Filed stip and order that the time for deft. to answer complaint
 deft. Sheet Metal Contractors Assoc. of N.Y.C., Inc. is ext. from
 8-17-71 to 9-7-71. So Ordered; McGohy, J.
 3-17-71 Filed stip and order that the time for defts' Mechanical Contractors
 Assoc. of N.Y., Inc., and members of the Joint Steamfitters
 Apprenticeship Committee to answer complaint is ext. from
 9-13-71 to 9-30-71. So Ordered; McLean, J.
 3-22-71 Filed ANSWER of Mechanical Contractors Assn. of N.Y. and Joint Steamfitters Industries
 3-22-71 Filed stip and order that the time for plff to answer deft.
 Local 40, interrogs. is ext. from 9-22-71 to 11-8-71. Croake, J.
 3-23-71 Filed Stip. and order that the time for deft. Sheet Metal Workers
 Local 28 Joint Apprenticeship Committee, to answer complaint
 is ext. from 8-17-71 to 9-24-71. So Ordered; Croake, J.
 3-23-71 Filed ANSWER of deft. "Local 28, Sheet Metal International Assoc. CGL&I
 to complaint
 3-23-71 Filed deft. Local 23, Third Party Complaint and issued summons
 3-24-71 Filed stipulation and order extending deft. Sheet Metal Workers Internatl. Assn.,
 Local Union No. 28's time to answer complaint to 9/24/71. So ordered. Croake, J.
 3-27-71 Filed stip and order that the time for deft. Sheet Metal Contractors
 Assoc. of N.Y.C. to answer complaint is ext. from 9-15-71 to
 9-30-71. So Ordered; Ryan, J.
 3-28-71 Filed ANSWER of Sheet Metal and Air Condition Contracting National Assn to R&G
 complaint.
 3-29-71 Filed stip and order that the time for deft. Sheet Metal Workers
 Local 28 Joint Apprenticeship Committee, to answer complaint is
 ext. from 9-24-71 to 10-1-71. So Ordered; Ryan, J.
 3-30-71 Filed Affidavit of service of third party summons and 3rd ptv. complaint.
 3-31-71 Filed fourth-party complaint and issued 4th party summons.
 4-1-71 Filed ANSWER of Sheet Metal Workers (Local Union #28) Joint Apprenticeship Committee
 and Trust ("Local 28 JAC") to complaint. R&G
 4-5-71 Filed Rose Fishman, Affidvt. of service on 10-1-71, of defts'
 indicated.
 4-12-71 Filed 4th party Summons with Marshal's ret. Served;
 N.Y. State Division of Human Rights, by Mr Brunner, on 10-4-71
 4-14-71 Filed stip and order that the time for deft. Local 40, International
 Association of Bridge, Structural and Ornamental Iron Workers,
 to answer interrogs. served by plff. is ext. from 10-8-71 to
 11-8-71. Cooper, J.
 4-18-71 Filed 3rd party deft. N.Y. State Division of Humans Rights, 3rd LJI
 party ANSWER
 4-20-71 Filed ANSWER of State Division of Human Rights to 4th party complaint. LJI
 4-25-71 Filed stip and order that the time for plff. U.S.A. to answer to
 deft. Local 40, Interrogs. is ext. from 11-8-71 to 12-8-71. Briant, J.
 4-26-71 Filed stipulation and order extending deft. Local 40 International Assn. of
 Bridge, Structural and Ornamental Iron Workers time to answer interrogs.
 to 12/8/71. So ordered. Briant, J.
 4-29-71 Filed Third Party Summons with Marshal's ret. Served;
 New York State of Human Rights, by Theresa Fzzippe on 9-27-71
 4-30-71 Filed Order to Show Cause re: Pre-Inj. Ret. 11/14/71. (by U.S. Atty).
 4-30-71 Filed Memorandum of law in support of Scott's motion.
 4-30-71 Filed Notice to take Deposition of deft. Local 40 of James A. Sullivan.

continued next page

DOCKET ENTRIES

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U.S.A. vs. LOCAL 638, etc.

JUDGE BONSALE & JUDGE GURFEN

71 CIVIL 2877

DATE	PROCEEDINGS	Date Julian
Dec. 9-71	Filed answer of plttf. to the interrogs. served by deft. Local 40, International Association of Bridge, Structural and Ornamental Iron Workers.	
Dec. 10-71	Filed Answers to Interrogatories.	
Dec. 13-71	Filed plttf's Order to Show Cause. Re: Prel. Inj. Ret. 12-11-71	
Dec. 13-71	Filed memorandum in support of motion for a prel inj.	
Dec. 14-71	Filed stip and order that the time for deft. Local 40, to produce with request of the document request of the plttf. be ext. from 12-8-71 to 1-5-72, etc. Croake, J.	
Dec. 15-71	Hearing before Bonsal, J. -- Decision Reserved.	
Dec. 20-71	Filed copy of Order to Show Cause re: Pre. Inj. and TRO. with marshal's return. with proof of service.	
Jan. 3-72	Filed stipulation and order that paragraphs (b), (c) and (d) of the TRO shall remain in full force and effect until 1/31/72 subject to such further order of the court as may enter in this action. So ordered. Bonsal, J.	
Jan. 3-72	Filed Findings of Fact and Conclusions of Law. Bonsal, J.	
Jan. 3-72	Filed Order that the 169 minority workers whose names are set forth in Exhibit A are granted full journeyman status in the Building and Construction Trades Branch of Local 638, with rights, privileges, etc. as all other members enjoying full journeyman status as indicated; etc. etc. Bonsal, J. (mailed notice).	
Jan. 17-72	Filed Deft. Local 28's Interrogs. to Plttf.	CGL
Jan. 1-72	Filed marshal's return of proof of service of Temp. Rest. Order and Order to Show Cause on 1/19/72.	
Feb. 7-72	Filed stipulation and order that Delson & Gordon, Esqs., is to appear as co-counsel herein with Peter Kaiser, Esq. as attys. for Local 638, etc. copies to be served upon attorneys for the co-defendants. So ordered. Gagliardi, J.	
Feb 10/72	Filed Notice of Deposition.	
Feb 18/72	Filed Stip & Order extending time to answer to 4/17/72 So ordered Mac Mahon J.	
Feb 22/72	Filed Affidavit of Abraham Satran in opposition to plttf's motion.	
Mar 2-72	Filed Notice of Examination before trial upon dft. Local 40 International Assoc. of Bridge, Structural & Ornamental Iron Workers,	
Mar. 8-72	Filed Interrogatories and Request for Documents.	
Mar 14-72	Filed Stip & Order adjourning deposition of dft. Local 40 International Assoc of Bridge, Structural & Ornamental Iron Workers to 3/21/72 in room 322 US Court House, etc.	
Mar. 23-72	Filed stipulation and order adjourning deposition of deft. Local 40, International Association of Bridge, etc. as indicated. So ordered. Bauman, J.	
Mar 27-72	Filed Notice for striking certain names as indicated by dft. Local 638.	
Apr. 12-72	Filed plttf's Notice to take deposition of Thomas M. McGowan, on 5-23-72.	
Apr. 12-72	Filed plttf's Notice to take deposition of John J. Kelleher, on 5-17-72	
Apr. 12-72	Filed plttf's Notice to take deposition of John J. McGibney, on 5-19-72.	
Apr. 12-72	Filed plttf's Notice to take deposition of Bernard F. McWeeney, on 5-23-72.	
Apr. 13-72	Filed transcript of Record of Proceedings of Dec. 10, 1971.	
Apr. 13-72	Filed transcript of Record of Proceedings of Dec. 15, 1971.	
Apr. 13-72	Filed transcript of Record of Proceedings of Dec. 15, 1971.	
PR. 17-72	Filed stip & order that time of deft. Local 580 to answer by plttf. to interrogs is ext. from 4-7-72 to 5-12-72, & time of deft. to produce documents to plttf. is ext. from 4-7-72 to 5-12-72. So ordered. Motley, J.	
Apr 13-72	Filed transcript dated Nov 26, Dec 1, 3-1971.	continued next page

DOCKET ENTRIES

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71 CIVIL 2877

U.S.A. VS. LOCAL 638, etc.

71 CIVIL 2877

U.S. District Court, Southern District of New York

JUDGE GURFEIN - ALL OTHER DEETS

JUDGE GURFEIN

DATE	PROCEEDINGS	Event Judge
Apr. 26-72	Filed ORDER referring this action to Judge Murray I. Gurfein with his consent, for ALL PURPOSES. Edelstein, J. (mailed notice).	
May 2-72	Filed stipulation and order extending pl'tf's time to answer or object to Interrogs. to 6/16/72. So ordered. Gurfein, J.	
May 5-72	Filed Notice to take Deposition of Gerald Campbell, Frank Catapano and Thaddeus Keyjak.	
May 5-72	Filed Notice to take Deposition of James Mulligan, John Tracey and Joseph J. Good.	
May 5-72	Filed Notice to take Deposition of William C. Vander, Thomas Schlagel, William P. Gund, Thomas A. Ledwith and Frederick J. Gruter.	
May 11-72	Filed ORDER that all issues relating to deft. Local 638 embraced in the complaint shall be referred to JUDGE ROSENAL, with his consent, for trial or other disposition. Gurfein, J. (mailed notice).	
May 12-72	Filed stipulation and order extending deft. Local 580, Internal Assn. of Bridge, Structural and Ornamental Iron Workers' time to answer interrogs, and to produce, to 6/1/72. So ordered. Gurfein, J.	
May 15-72	Before Gurfein, J. Trial began and continued.	
May 16-72	Trial continued.	
May 17-72	Trial continued.	
May 18-72	Trial continued - and concluded. Decision Reserved. Both sides to submit briefs and exchange briefs by 6/5/72.	
Jun. 15-72	Filed letter of Cohen, Glickstein, Lurie & Ostrin addressed to Gurfein, J. dated May 12, 1972	
Jun. 15-72	Filed affdvt. and notice of motion for Applicant for Intervention to Intervene. Ret. 6-5-72	
Jun. 15-72	Filed Opinion # 38,569--Permission for the City of New York to intervene as an additional party pl'tf. in that part of the action which relates to Local 26 is granted. The caption shall be amended accordingly. Papers may be filed without further order. It is so ordered; Gurfein, J. M/N	
Jun 27-72	Filed Defendants Answers to Interrogatories.	
Jun 30-72	Filed Answers and Objections to Interrogatories.	
Jul 5-72	Filed Defendants Local 580 Interrogatories to Plaintiff.	
Jul 7-72	Filed transcript of Record of Proceedings of May 18, 1972.	
Jul 7-72	Filed transcript of Record of Proceedings of May 17, 1972.	
Jul 7-72	Filed transcript of Record of Proceedings of May 15, 1972.	
Jul 7-72	Filed letter addressed to Judge Gurfein (dated 6/21/72)	
Jul 7-72	Filed Plaintiff's Proposed Findings of Fact and Conclusions of Law.	
Jul 7-72	Filed Memorandum in support of application for injunctive relief.	
Jul 7-72	Filed Post-Trial Memorandum of United States.	
Jul 7-72	Filed Defendants Local 15 and Local 40 JAC Post-Trial Brief.	
Jul 7-72	Filed Plaintiff's Proposed Findings of Fact and Conclusions of Law.	
Jul 7-72	Filed OPINION #38516. Gurfein, J. SUMMIT ORDER as provided in the numbered paragraphs (which are the Court's findings of fact and conclusions of law. (mailed notice).	
Jul 21-72	Filed Interrogatories and Requests for Documents.	
Jul 21-72	Filed Interrogatories.	
Aug. 2-72	Filed transcript of Record of Proceedings of May 1, 1972.	
Aug. 2-72	Filed transcript of Record of Proceedings of May 15, 16 and 17, 1972.	
Aug. 2-72	Filed transcript of Record of Proceedings of May 18, 1972.	
Aug. 10-72	Filed memo of law on behalf of Steamfitters Local 638.	
Aug. 17-72	Filed Local 638 affidavit & show cause order for preliminary injunction & temporary restraining order ret. in Rm. 110 why an order pursuant to FRCP. 65(a) should not be issued enjoining, & restraining the pl'tf from causing the Federal Bureau of Investigation to interview members of deft's as indicated. Bauman, J.	

DOCKET ENTRIES

A-11

JUDGE BONSAI - AS TO LOCAL 6303
JUDGE GURFEIN ALL OTHER DEFTS.

DATE	PROCEEDINGS	Date of Judgment
Nov. 28-72	Filed stip & order that time of deft. Sheet Metal Contractors of New York, to answer interroggs of plttf. is ext. to 9-29-72. So ordered. Gurfein, J.	
Dec. 25-72	Filed plttf's notice to take deposition of Local 28, on 9-11-72.	
Dec. 15-72	Filed plttf's notice to take deposition of Stevens Institute on 9-15-72.	
Dec. 15-72	Filed plttf's notice to take deposition of deft. Sheet Metal on 10-16-72.	
Dec. 2-72	Filed plttf's notice to take deposition of deft. " " on 10-17-72.	
Dec. 5-72	Filed stip & order that deft's Sheet Metal Contractors to answer interroggs is ext. from 9-29-72 to 10-13-72. So ordered. Gurfein, J.	
Dec. 7-72	Filed stip & order that deft's Sheet Metal Contractors deposition is ext. from 10-6-72 to 10-25-72. So ordered. Gurfein, J.	
Dec. 26-72	Filed plttf's notice of settlement ref. before Gurfein, J. on 10-30-72.	
Dec. 6-72	Filed stip & order that Stevens Institute of Technology shall furnish the plttf. with one copy of each test requested upon the following express conditions, etc. So ordered. Gurfein, J.	
Dec. 14-72	Filed deft's Local 28's interroggs to plttf. City of New York.	
Dec. 16-72	Filed deft's Local 28, Sheet Metal notice to take deposition of plttf, City of New York on 12-7-72.	
Dec. 24-72	Filed plttf's notice to take deposition of Robert Schluter on 12-3-72.	
Dec. 18-72	Filed Order & Judgment that plttf. have judgment against deft's for Union Membership relief & Referrals as set forth. The Court retains jurisdiction over all matters pertaining to the execution of this judgment including but not limited to the modification of any of the foregoing paragraphs by the setting of specific numbered limitations. Gurfein, J. Judgment Ent. Clerk. M/N Ent. 12-20-72.	
Dec. 26-72	Filed consent & pre-trial order. So ordered. Bonsai, J.	
Dec. 29-72	Filed plttf's request for production of documents.	
Jan. 14-73	Filed Transcript of record of proceedings, dated 11-21-72.	
Jan. 11-73	Filed stip & order that time of parties to submit a list of impartial examiners, is ext. to 2-16-73. So ordered. Gurfein, J.	
Jan. 17-73	Filed notice of RE Settlement & order that deft. JAC shall have judgment against the plttf. USA dismissing the action for reasons stated in the opinion of this court dated 7-7-72. Plttf. shall have judgment against the deft/s Local 40 & Allied Metal for the relief indicated in the order dated 12-18-72. Gurfein, J. Judgment Ent. Clerk. Mailed notice. Ent. 1-19-73	
Jan. 22-73	Filed plttf's second set of interroggs to deft. Local 28.	
8-16-73	Filed notice of appeal of Mechanical Contractors Assoc. of NY to the USCA appealing the order and judgment entered on June 21, 1973 in favor of plttf. and against deft. Mechanical Contractors Assoc. which grants injunctive relief against said deft. Mailed Notice to: US Attorney, Foley Square Ernest Fleischman 230 Park Ave. NYC 10017 Dennis Yeager 422 W. 118th St., NYC 10027 Breed Abbott and Morgan 1 Chase Manhattan Plaza, NYC 10027	

DOCKET ENTRIES

A-12

PAGE 7

Duplicate Sheet, Original Missing

- 2-1-73 Filed def't's Local 28's answers to interrogs.
- 2-12-73 Filed pl'tff's notice to take deposition of Local 400 on 3-5-73.
- 2-21-73 Filed Def't's Local 28's answers to pl'tff's U.S.A. second set of int
- 2-21-73 Filed def't's Local 28's supplemental answers to pl'tff's U/S/A first of interrogs.
- 2-27-73 Filed notice of settlement & Order that the parties were directed to submit to this court an agreed list of examiners to comprise an , examining board & list having been presented . Ordered. that Dr., Lawrence R. Cohen, Professor Joseph Gennaro & John R. Murphy shall comprise such board. Gurfein, J.
- Mar. 15-73 Before Bonsal, J. Non-Jury trial begun.
- Mar. 16-73 Trial continued, 1-17, 1-18, 1-19, 1-24, 26. Dececion Reserved.
- Mar. 5-73 Filed post-trial memorandum of Def't. Mechanical Contractors Assoc. c anythe Employer members of the Joint Steamfittng Apprenticeship C
- Mar. 6-73 Filed pl'tff's notice to take deposition of Sheet Metal Workers on 3-
- Mar. 8-73 Filed stip & order that subject to the order of the court pl'tff. U.S. may distribute & collect a form prepared by the U.S. Attorney desi to ascertain the race & national origin of each person taking the aforesaid examination on 3-10-73. So ordered. Gurfein, J.
- Apr. 2, 73 Filed Pl'tff Notice to Take Deposition of Frank Weigel returnable h/23/73, 10:00 A.M., Roo Issued subpoenas.
- Apr. 25, 73 Filed Pl'tff's Request for Documents.
- Apr. 27-73 Filed Gov't's request for production of documents to def't Sheet Metal Wo. Local 28 Joint Apprenticeship Committee on 5-29-73.
- Apr. 27-73 Filed pl'tff's Answers to interrogs. of def't Local-28.
- May 4-73 Filed Gov't's notice to take deposition of def't Local 28 by Dan Pasquinnucci, Sam Elnick and Edward Stack on 5-8-73.
- Jun 1, 73 Filed Stip & Order extending Pl'tff's time to answer is adjourned from 5/29/73 to 6/11/73 10:00 A.M. GURFEIN, J.
- 7-20-73 Filed def't. Enterprise Assoc. Steamfitters Local 638 of UA, notice of appeal to the USCA for the Second Circuit from the Order and Judgment en. June 21, 1973 in favor of pl'tff. etc. Mailed notices to: Delson & Co. 230 Park Ave, NYC. (copies of appeal)
1. Thomas A. Shaw, Jr., Breed, Abbott & Morgan, 1 Chase Manhattan Pl. (atty for Mech. Contractors)
 2. Delson & Delson, 230 Park Ave, NYC (atty. for Union members of Joint Steamfitters Assoc)
 3. Paul J. Curran, USA, atty. for pl'tff.
- 7-20-73 Filed undertaking for costs on appeal for Enterprise Assoc. Steamfitters Local 638 of UA by Hartford Accident and Indemnity Co. in the amt. of \$250.00
- Aug. 8-73 Filed Affidvt of Steven J. Glasman (for USA) in opposition to Order to Show Cause and Motion for stay.
- Aug. 8-73 Filed Gov't's Memorandum of Law in opposition to Proposed Order to

DOCKET ENTRIES

A-13

(over)

PAGE 8

(DUPLICATE SHEET-ORIGINAL MISSING)

CORRECTION

Aug 8-79 Cause and Motion for Stay.

11

(CONTINUED ON PAGE 9)

DOCKET ENTRIES

A-14

CIVIL DOCKET, No. 84

Page 4 -

By letter - all other

DATE	FILINGS—PROCEEDINGS	APPEAL RECORD RETURN
Aug 28-73	Filed stip & Order extending time for deft Enterprise Assoc. Steamfitters Local 638 of US to transmit the record on appeal to Wednesday, 9/5/73- <u>BYATT, J.</u>	
Aug 31-73	Filed Joint Designation of Exhibits by Steamfitters Local 638 of U.A.A. for Union members of Joint Steamfitters Apprenticeship Committee, Hon. Paul J. Curran, US Atty for SDNY.	
Oct 12-73	Filed Stip & Order extending time for deft. Enterprise Assoc. Steamfitters Local 638 of U.A. to transmit Record on Appeal to Friday, Oct. 19, 73 <u>BYATT, J.</u>	
9-19-73	Filed Supplemental Affidavit in support of Motion by S.J. Glassman.	
9-19-73	Filed Notice and Affidavit of J.A. Mulligan dated 2-1-73	
9-19-73	Filed Transcript of proceeding dated 8-17-72	
9-19-73	Filed Memorandum in support of motion of Allied Bldg Metal Industrs. Inc to dismiss the complaint.	
9-19-73	Filed Post-trial Memo in support of motion of Deft. Allied Bldg. Metal Industrs. Inc. to dismiss the Complaint.	
9-19-73	Filed Notice of Motion of the Govt.	
9-19-73	Filed Affidavit in opposition by Howard S. Sussman dated 8-17-72	
9-19-73	Filed Notice of Motion by the Govt. dated May 12, 72	
9-19-73	Filed Reply Affidavit of Ernest Fleischman dated 8-14-72	
9-19-73	Filed Reply Memo of Law in support of Pltffs' motion for a determination of the class.	
9-19-73	Filed Govt's proposed findings of fact.	
9-2-73	Filed Designation of the record to be transmitted to USCA also filed in 71 Civ 847 by Delson & Goddon. with Affidavit of Service.	
Sep 20-73	Filed Pltff's Affidvt by Dennis R. Yeager.	
Oct. 15-73	Filed pltff's (U.S.A.) notice of motion Re: bill of costs.	
Oct. 15-73	Filed " " memorandum in support of its motion.	
Oct 15-73	Filed stipulation designating documents not to be included on the record on appeal.	
Oct 15-73	Filed stipulation that the attached documents may be transmitted to US	
Oct 15-73	Filed stipulation the attached copies of missing documents may be transmitted to USCA as part of the record on appeal.	

William J. Deane
Clerk

COMPLAINT (87 CIV 847)

A-15

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
:
GEORGE RIOS, EUGENE C. JENKINS,
ERIC O. LEWIS and WYLIE B. RUTLEDGE,
:
:
Complainants,
:
:
-against-
:
:
ENTERPRISE ASSOCIATION STEAMFITTERS
LOCAL UNION #638 of U.A.; MECHANICAL
CONTRACTORS ASSOCIATION OF NEW YORK,
INC. and the JOINT STEAMFITTING
APPRENTICESHIP COMMITTEE OF THE
STEAMFITTERS' INDUSTRY EDUCATIONAL
FUND,
:
:
Respondents.
:
:
-----X

Filed
S.D.N.Y.
2/26/87
COMPLAINT -
CLASS ACTION
71 Civ. 847

I.

NATURE OF CLAIM

1. This is a class action for injunctive and declaratory relief to redress the deprivation of rights secured to the Plaintiff by the United States Constitution, 42 U.S.C. §1981, 42 U.S.C. §1983, and Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§2000e et seq.). Immediate and irreparable damage will result if the Defendants are not restrained from violation of said rights.

II.

JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1243 and 28 U.S.C. §§2201 and 2202.

III.

CLASS

3. Plaintiffs bring this action pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure on behalf of themselves and all persons similarly situated. The members of this class, which has approximately 500 members, are too numerous to be joined in one action. The class is composed of all minority group members who now have the skills to do steamfitting work and all minority group members who wish to learn such skills and are capable of learning to perform steamfitting work and who reside in the New York, New York metropolitan area and who are not members of Defendant Enterprise Association Steamfitters Local Union #638 (hereinafter referred to as the "Union").

4. Plaintiffs Rios, Jenkins and Lewis are fully qualified steamfitters whom the Union refuses to refer for work and to admit to membership. Plaintiff Rutledge has been denied admission to the apprenticeship program operated by the Defendants even though he is intelligent, able-bodied and fully capable of doing steamfitting work if given reasonable training. Plaintiff Rios is a Puerto Rican citizen of the United States residing in New York, New York. Plaintiff Jenkins is a Negro citizen of the United States residing in Hempstead, New York. Plaintiff Lewis is a Negro citizen of the United States residing in New York, New York. Plaintiff Rutledge is a Negro citizen of the United States residing in Brooklyn, New York. For these reasons the Plaintiffs will fairly and adequately protect the interests of their class in this action for declaratory and injunctive relief and

class of
500
who have
skills to
do steamfitting
work
who
are capable of
learning to perform
steamfitting work
who reside in the
New York, New York
metropolitan area
and who are not
members of Defendant
Enterprise Association
Steamfitters Local Union
#638

Rutledge
apprenticeship

their claims are typical of the claims of the other members of the class.

5. The questions of law common to the above-described class are whether or not the membership, training, apprenticeship, referral and hiring practices of the Defendants deprive the members of the class of civil rights secured to them by the United States Constitution, 42 U.S.C. §1981, 42 U.S.C. §1983 and 42 U.S.C. §§2000e et seq. by denying them an opportunity to secure employment as steamfitters while making that opportunity available to white persons.

6. The Defendants have acted, or refused to act, on grounds generally applicable to the class, thereby making appropriate injunctive and declaratory relief with respect to the class as a whole.

IV.

STATEMENT OF CLAIM

7. Defendant Union is a labor union which is the collective bargaining agent for union construction jobs in the steamfitting industry in the New York, New York metropolitan area in which area it operates as a referral agent and source of workers for the steamfitting industry.

8. Defendant Mechanical Contractors Association of New York, Inc. (hereinafter referred to as the "Association") is an organization which represents steamfitting industry employers in their relations with the Union and, as such, has agreed to the referral and apprenticeship arrangements with the Union. The Union and the Association jointly control access to Union jobs in the New York, New York metropolitan area.

9. Defendant Joint Steamfitting Apprenticeship

Committee of the Steamfitters' Industry Educational Fund is composed of an equal number of representatives of the Union and of the Association. It supervises the steamfitters apprenticeship program and has general responsibility for establishing apprenticeship standards and class size.

10. Plaintiff Rios is a 32 year old Puerto Rican citizen of the United States who lives in New York, New York.

11. Plaintiff Rios had experience with steamfitting and pipe fitting as an apartment house maintenance worker for four years prior to 1969. In the Summer of 1969 Mr. Rios went to work for Mr. Erling Rohde, an experienced plumbing contractor, who taught Mr. Rios additional plumbing and pipefitting techniques. In February, 1970 Mr. Rios went to work as a steamfitter for the Urban Mechanical Company at a commercial office building being constructed at 125th Street and Seventh Avenue in New York, New York. The work at that site was completed in December, 1970.

12. Plaintiff Jenkins is a 30 year old Negro citizen of the United States who lives in Hempstead, New York.

13. Plaintiff Jenkins was taught pipefitting and steamfitting techniques as a student at Thomas L. Edison High School, New York, New York and had experience in pipefitting and steamfitting as a plumber from 1957 to 1959, as a navy pipefitter from 1959 to 1963 and as a refinery pipefitter from 1963 until February, 1970. In February, 1970 Mr. Jenkins went to work as a steamfitter for the Urban Mechanical Company at the commercial office building being constructed at 125th Street and Seventh Avenue in New York, New York. The work at that site was completed in December, 1970.

14. From February, 1970 until March, 1970, Plaintiffs Rios and Jenkins were the only steamfitters working at the Urban Mechanical Company's site at 125th Street and Seventh Avenue and had sole responsibility for the steamfitting work there. Additional employees came to the site in March because the amount of work to be done required more workers.

15. Plaintiff Lewis is a 37 year old Negro citizen of the United States residing in Bronx, New York.

16. Plaintiff Lewis has had six years experience as a plumber's helper. Plaintiff Lewis worked in a factory as a leadwiper from 1956 to 1958. He worked for Mr. Erling Rohde, an experienced plumbing contractor, from April, 1970 until September, 1970.

17. In early September, 1970, Plaintiff Lewis went to work as a steamfitter for Urban Mechanical Company at the site at which Plaintiffs Rios and Jenkins were then working.

18. The Urban Mechanical Company is a party to a collective bargaining agreement with the union and Plaintiffs believe that that agreement requires that persons working on Union jobs be Union members or be admitted to the Union shortly after they begin those jobs.

19. On May 27, 1970, Mr. Frederick Clarke, President of Urban Mechanical Company, addressed a letter to the Union in which he informed the Union that Plaintiffs Rios and Jenkins were working for him as steamfitters.

20. Mr. James Haughton, President of Harlem Fight-Back, an organization of minority group construction workers to which Plaintiffs Rios, Jenkins and Lewis belong, addressed a letter to the Union asking that Plaintiffs Rios and Jenkins be admitted to membership in June, 1970.

21. Plaintiffs Rios and Jenkins both personally delivered a letter to the Union requesting membership application forms and mailed one additional letter asking that they be admitted to membership in late June, 1970.

22. Plaintiff Lewis visited the offices of the Association in June, 1970 and asked for work as a steamfitter. He was told by a representative of the Association that he would have to become a member of the Union to get steamfitting work and that to become a member of the Union he would have to take the apprenticeship program. He was told that he probably would not want to take the apprenticeship program because the pay would be low during apprenticeship.

23. On September 30, 1970 Plaintiff Lewis wrote to the Union and requested that he be admitted to membership.

24. The Union did not respond in any way whatsoever to any of the requests that Plaintiffs be admitted to membership.

25. Plaintiff Rutledge is a twenty one year old Negro citizen of the United States.

26. Plaintiff Rutledge is intelligent and in good health and is fully capable of doing steamfitting work if he is given reasonable training.

27. In June, 1970, Plaintiff Rutledge sought admission to the apprenticeship program operated by the Defendants but was denied admission to the program because he allegedly did not obtain a score as high as others taking the same test. Had Plaintiff Rutledge passed this test he would have been required to complete a long and unreasonably difficult apprenticeship program before being admitted to the Union.

28. Plaintiff Rutledge presently wishes to become a member of the Union.

29. On August 19, 1970 Plaintiffs Rios and Jenkins filed a complaint with the New York State Division of Human Rights (the "Division") which charged that the Union's refusal to admit them to membership and the Union apprenticeship method of membership admission discriminated against them. On October 8, 1970 Plaintiff Lewis filed a similar complaint with the Division. On December 14, 1970 Plaintiff Rutledge filed a similar complaint with the Division. On October 15, 1970 Plaintiffs Rios and Jenkins and on December 8, 1970 Plaintiff Lewis filed substantially the same complaints, respectively, with the United States Equal Employment Opportunity Commission ("E.E.O.C."). On February 16, 1970 Plaintiffs' Attorney mailed a Complaint to the E.E.O.C. on behalf of Plaintiff Rutledge. (Copies of the Complaints filed with the E.E.O.C. are attached as Exhibit A, copies of the State Complaints are exhibits to the Plaintiffs' respective E.E.O.C. Complaints.)

30. On October 7, 1970 a preliminary conference was held by the Division on the Complaints filed by Plaintiffs Rios and Jenkins. On November 18, 1970 a preliminary conference was held by the Division on the Complaint filed by Plaintiff Lewis. At these conferences the Union persisted in its refusal to admit the Plaintiffs to membership.

31. On December 24, 1970 the Division made a finding of "probable cause" in the cases of Plaintiffs Rios, Jenkins and Lewis (copies of Letters to this effect are attached as Exhibit B).

32. On February 16, 1971 the Attorney for Plaintiffs received from the E.E.O.C. "permission to sue" letters in the cases of Rios, Jenkins and Lewis (copies of these letters are attached as Exhibit C).

33. The Urban Mechanical Company's steamfitting work at Seventh Avenue and 125th Street is finished and Plaintiffs Rios, Jenkins and Lewis cannot obtain employment as steamfitters on Union construction sites. Plaintiff Rios and Jenkins are employed by Urban Mechanical Company as plumbers. Plaintiff Lewis is employed as a plumber by a different contractor. Plaintiff Rutledge cannot obtain steamfitting work because he was not accepted for the apprenticeship program operated by Defendants.

34. Plaintiffs believe that the Union will not admit them to membership unless they complete the apprenticeship program operated by Defendants even though Plaintiffs are fully qualified to do steamfitting work.

OP- [unclear]

35. The apprenticeship program is a discriminatory device because it imposes a number of barriers to obtaining work as a steamfitter which barriers are not related to that work and which require workers to be over-qualified to do such work. These barriers include an age limit, a residence requirement, numerous and non-job related tests, unnecessary classroom and on-the-job training, oral interviews, formal educational requirements and the unnecessarily long period of apprenticeship. The restrictions on the number of persons admitted to the apprenticeship program and to membership are also discriminatory barriers to employment in the steamfitting industry. All of these devices operate to perpetuate the exclusion of minority group members from Union membership.

36. Upon information and belief, the Union now has very few minority group workers as members though Plaintiffs are without access to specific information as to the number of minority group workers in the Union because the Union does not report this information to the United States Equal Employment Opportunity Commission as required by law. The Union has approximately 4000 members.

37. The Union operates under color of state law because it is an agent for referral of employees to steamfitting work in the unionized steamfitting industry in New York City and because much of that work is public construction work. The Union also functions under color of law because the Union operates as an exclusive collective bargaining agent under the provisions of federal labor legislation.

38. All of the Defendants operate the apprenticeship program under color of state and federal law because they operate it in cooperation with the Union which operates under color of law and because the apprenticeship program is certified by the New York State Department of Labor and/or the United States Department of Labor, Bureau of Apprenticeship and Training.

AS AND FOR A FIRST CAUSE OF ACTION

AGAINST ALL OF THE DEFENDANTS

39. All of the said acts of the Defendants violate the Fifth and Fourteenth Amendments to the United States Constitution.

AS AND FOR A SECOND CAUSE OF ACTION

AGAINST ALL OF THE DEFENDANTS

40. All of the said acts of the Defendants violate the Thirteenth Amendment to the United States Constitution and 42 U.S.C. §1981.

AS AND FOR A THIRD CAUSE OF ACTION
AGAINST ALL OF THE DEFENDANTS

41. All of the said acts of the Defendants violate
42 U.S.C. §1983.

AS AND FOR A FOURTH CAUSE OF ACTION
AGAINST ALL OF THE DEFENDANTS

42. All of the said acts of the Defendants violate
Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§2000e
et seq.).

WHEREFORE Plaintiffs respectfully request that this
Court:

A. Enter a declaratory judgment declaring the acts
of the Defendants to be in violation of the Constitution and
laws of the United States.

B. Issue a preliminary and permanent injunction:

1. Restraining the Union from discriminating
against Plaintiffs Rios, Jenkins and Lewis and
members of their class by refusing to admit them
into union membership with full journeyman status.

2. Restraining the Union from discriminating
against Plaintiffs Rios, Jenkins and Lewis and
members of their class by refusing to place them
in the highest hiring hall referral category and
and by refusing to refer them for steamfitting
work as if they were full journeymen in the
highest hiring hall referral category.

3. Restraining the Union, Association and Joint Steamfitting Apprenticeship Committee from discriminating against Plaintiff Rutledge and members of his class by refusing to admit them to the steamfitters apprenticeship program operated by the Defendants.

C. Issue a permanent injunction requiring the Defendants to:

1. Cease discriminating against Plaintiffs and members of their class.

2. Cease setting arbitrary limits on the number of persons admitted to each apprenticeship class and to membership in the Union.

3. Cease imposing unnecessary and excessively difficult barriers to employment in the steamfitting industry, including the age limit, residence requirement, unnecessary tests and training requirements, oral interviews, formal educational requirements and an unnecessarily long period of apprenticeship.

D. Award the Plaintiffs and their class damages for the deprivation of their right to be employed.

E. Award the Plaintiffs costs and attorney fees incurred in the prosecution of this case.

F. Award such other and further relief as to this Court may seem just and proper.

151 Dennis R. Yeager
DENNIS R. YEAGER, ESQ.
E. RICHARD LARSON, ESQ.
401 West 117th Street
New York, New York 10027
(212) 280-4112

ATTORNEYS FOR PLAINTIFFS

OF COUNSEL:

DOUGLAS D. BROADWATER, ESQ.
1 Chase Manhattan Plaza
New York, New York 10005

GEORGE COOPER, ESQ.
401 West 117th Street
New York, New York 10027

STATE OF NEW YORK - EXECUTIVE DEPARTMENT

STATE DIVISION OF HUMAN RIGHTS

on the complaint of

EUGENE C. JENKINS

Complainant,

against

ENTERPRISE ASSOCIATION STEAMFITTERS
LOCAL UNION #638 OF UA, MECHANICAL CON-
TRACTORS ASSOCIATION OF NEW YORK, INC.
AND THE JOINT APPRENTICESHIP COMMITTEE OF
THE STEAMFITTERS INDUSTRY EDUCATIONAL
FUND

Respondent.

COMPLAINT NO.

I, Eugene C. Jenkins
residing at 83 Harriman St., Hempstead, Long Island, New York Tel No. 516-489-6671
charge Enterprise Association, Steamfitters Local Union No. 638 of the UA; Mech-
anical Contractors Association of New York, Inc. and Joint Apprenticeship Com-
tee of the Steamfitters Industry Educational Fund; whose addresses are: 641 Bro-
way (Tel. 674-3937), 230 Park Avenue (Tel. MU 6-0940) and 75 E. 45th Street
(tel. MU 5-8453, New York, New York, respectively,
with an unlawful discriminatory practice relating to employment on or about June, 1970 and continuing to
by refusing to admit me to membership in Enterprise Association Steamfitters
Local Union No. 638 of the U.A.

because of my AGE (), RACE (X), CREED (), COLOR (X), NATIONAL ORIGIN (), SEX ().

The particulars are:

1. My name is Eugene C. Jenkins and I am a Negro citizen of the United States residing in Hempstead, Long Island, New York.

2. Upon information and belief, the Defendant Enterprise Association of fitters Local Union #638 of UA (hereinafter referred to as the "Union") is a labor union which is the exclusive referral agent for union jobs in the steamfitting industry in New York City and its surrounding areas.

3. Upon information and belief the Defendant Mechanical Contractors Association of New York, Inc. (hereinafter referred to as the "Association") represents the employers in the New York steamfitting industry in their relations with the Union.

4. Upon information and belief, the Defendant Joint Apprenticeship Com- of the Steamfitters Industry Educational Fund, is a committee composed of representatives of the Union and the Association which supervises the steam- fitters apprenticeship program.

5. On February 20, 1970, I went to work as a steamfitter for the Urban Mechanical Company on a construction job located at Seventh Avenue and 125th Street, New York, New York, and I am working as a steamfitter on that job as of this date.

6. I have been informed by Mr. Frederick Clark, President of Urban Mechanical Company that he has made numerous efforts to secure membership in the Union for me and George Rios, a Puerto Rican, who works with me on this job and who also wants to join the Union. Mr. Clark informed me that he made these efforts during the period from March to June, 1970. On May 27, 1970, he wrote to the Union asking that Mr. Rios and I be made members. As of the date of this Complaint he has received no response.

7. In May, 1970, I went to the office of the Union located at 641 Broadway, New York, New York. Mr. Rios went with me. We informed the recep- tionist that we wanted to become members of the Union. She told us that we should write a letter requesting application forms. We went to a nearby store and purchased writing paper and we each wrote a letter requesting application forms. We left the letters with the receptionist. I have had no response to that letter and Mr. Rios has told me that he has had no response.

8. Since we had no response to our letter, Mr. Rios and I went to the office of the Union on June 1, 1970. We were told that we should write another letter requesting application forms. We went to a nearby store and purchased writing paper and we each wrote a letter requesting application forms. We left the letters with the receptionist. I have had no response to that letter and Mr. Rios has told me that he has had no response.

EXHIBIT A

CHARGE OF DISCRIMINATION

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission, Room 5010, in your area as soon as possible. It must be mailed within 90 days after the discriminatory act took place.

This form is to be used only to file a charge of discrimination on RACE, COLOR, NATIONALITY, SEX, or NATIONAL ORIGIN.

(PLEASE PRINT OR TYPE)

Case File No.

1 Your Name (Mr., MRS., MISS, etc.) George Rios
 Street Address 151 East 107th Street
 City New York, State New York Zip Code 10029

2 WAS THE DISCRIMINATION BECAUSE OF: (Please check one)
 Race or Color ☒ Religious Creed ☐ National Origin ☐ Sex ☐

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprentices committee. If more than one, list all.

Name Enterprise Association Steamfitters Local Union #638 of U.A.

Street Address 841 Broadway

City New York

State New York

Zip Code

AND (other parties if any) Mechanical Contractors Association of New York, Inc.
230 Park Avenue, New York, New York

Joint Apprenticeship Committee of the Steamfitters Industry Educational Fund
75 East 45th Street, New York, New York

4 Have you filed this charge with a state or local government agency? Yes ☒ No ☐ When 8 19 70
 MONTH YEAR DAY

5 If your charge is against a company or a union, how many employees or members? Over 25 ☒ Over 50 ☐

6 The most recent date on which this discrimination took place: Month 10 Day 5 Year 70
 MONTH DAY YEAR

7 Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary.)

1. By name is George Rios and I am a 32 year old Puerto Rican citizen of the United States residing in New York, New York.

2. Upon information and belief, the Defendant Enterprise Association Steamfitters Local Union #638 of U.A. (hereinafter referred to as the "Union") is a labor union which is the exclusive referral agent for union jobs in the steamfitting industry in the New York City area.

3. Upon information and belief, the Defendant Mechanical Contractors Association of New York, Inc. (hereinafter referred to as the "Association") represents the employers in the New York steamfitting industry in their relations with the Union and represents those employers in the negotiation of the collective bargaining agreement between the Union and those employers.

(continued on attached rider which is adopted and made a part hereof)

8 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Date Oct 15, 1970

Signature Rios

George Rios
151 East 107th Street
New York, New York 10029

October 15, 1970
Melvin Rios

4. Upon information and belief, the Defendant Joint Apprenticeship Council of the Steamfitters Industry Educational Fund is a committee composed of representatives of the Union and the Association. The Council supervises the steamfitters apprenticeship program and has general responsibility for establishing apprenticeship standards.

5. On February 20, 1970, I went to work as a steamfitter for the Urban Mechanical Company on a construction job located at Seventh Avenue and 125th Street, New York, New York and I am working as a steamfitter on that job as of this date.

6. I have been informed by Mr. Frederick Clark, President of Urban Mechanical Company that he has made numerous efforts to secure membership in the Union for me and for Eugene C. Jenkins, a Negro, who works with me on this job and who also wants to join the Union. Mr. Clark informed me that he made these efforts during the period from March to June, 1970. On May 27, 1970, he wrote to the Union asking that Mr. Jenkins and I be made members. He has informed me that as of the date of this complaint he has received no response.

7. In May, 1970, I went to the office of the Union located at 841 Broadway, New York, New York. Mr. Jenkins went with me. We informed the receptionist that we wanted to become members of the Union. She told us that we should write a letter requesting application forms. We went to a nearby store and purchased writing paper and we wrote a letter requesting application forms. We left the letter with the receptionist. I have had no response to that letter and Mr. Jenkins has told me that he has had no such response.

8. Since we got no answer to this letter Mr. Jenkins and I each wrote an additional letter to the Union in late June, 1970. In these letters we stated that we felt that the Union was trying to avoid making us members and urged that the Union admit us as soon as possible.

9. Mr. James Haughton, President of Harlem Fight-Back, an organization of minority group construction workers of which I am a member, told me that he also wrote to the Union in late June, 1970 and asked that Mr. Jenkins and I be admitted to membership. I understand that in his letter Mr. Haughton informed the Union that he thought it was refusing to admit Mr. Jenkins and me.

10. No one has received any response whatsoever to any of the many letters addressed to the Union. Nor has there been any response to the oral requests made by Mr. Clark, Mr. Jenkins and me. The Union is obviously refusing to admit me to membership. This must be because of my race, color and national origin since I am fully capable of doing steamfitting work. In fact, I had four years experience as an apartment house maintenance man where my work involved pipefitting and plumbing work. In the summer of 1969, I went to work for Mr. Erling Ronde, a plumbing contractor. I worked for him until February, 1970, when I began my present job. He is an excellent plumbing contractor and he taught me to do plumbing and general pipefitting. I began my present job in

RIDER (p.2)

February, 1970. Mr. Jenkins and I have done all of the steamfitting work on this job and Mr. Clark has repeatedly told us that we are doing an excellent I have learned the steamfitting trade and I can do steamfitting work as well as anyone. The Union has no legitimate reason to refuse to admit me to membership.

11. On August 19, 1970 I filed a Complaint (a copy of which is annexed as Exhibit "A") charging substantially the same acts of discrimination by the Defendants as charged herein with the N.Y. State Division of Human Rights. To date, the Division has made no decision on that complaint. I request that the Equal Employment Opportunity Commission assume jurisdiction of my case.

12. If I am not admitted to membership I cannot get work on union jobs which are the vast majority of available jobs and the only jobs paying union scale wages. This will mean that when my present job ends I will not be able to get any decent work in my trade.

13. I believe that the Union's agreement with management requires that I be admitted to membership within a few days after I begin working, on a union job. Mr. Clark is a party to that agreement and his job is a Union job. The Union is deliberately ignoring that agreement in order to keep me from getting work when this job ends.

14. I believe, from what I have seen and heard, that there are virtually no Negroes or Puerto Ricans in the Union.

15. I believe that the Union, if it does agree to accept me for membership will try to force me to take the apprenticeship program operated jointly by the Defendants before admitting me to full membership though I am fully capable of performing all types of steamfitting work. I think that this discriminates against me on the basis of my race, color and national origin because the Union admits whites without requiring them to be apprentices or requiring it for only a short time. It also discriminates against me because apprenticeship imposes a number of barriers to work as a steamfitter which are not in any way related to that work and which require workers to be over-qualified to do such work. These barriers include an age limit, a residence limit, numerous tests, unnecessary class-room and on-the-job training and an unnecessarily long period of apprenticeship training. I also believe that the Union's practice of unnecessarily restricting the size of its apprenticeship class and the number of persons admitted to membership is a discriminatory device. I believe that the apprenticeship program is established, financed and supervised by all the Defendants acting in concert.

16. The apprenticeship program and the membership qualifications and restrictions imposed by all of the Defendants operate to deny access to work in the steamfitting industry in a discriminatory manner. I believe that, in practice, steamfitting industry employers do not hire workers who are not members of the Union or who the Union will not admit to membership.

RIDER (p. 3)

17. On October 5, 1970, a preliminary hearing was held on my case by the New York State Division of Human Rights. The Union continued to refuse to admit me to membership. As of this date I have received no information concerning the result of that hearing.

COMPLAINT (87 CIV 847)

A-33

EXHIBIT A

STATEMENT OF HUMAN RIGHTS

Complained

GEORGE RIOS

Complainant

ENTERPRISE ASSOCIATION STEAMFITTERS
LOCAL UNION #638 OF UA, MECHANICAL
CONTRACTORS ASSOCIATION OF NEW YORK, INC.
AND THE JOINT APPRENTICESHIP COMMITTEE OF
THE STEAMFITTERS INDUSTRY EDUCATIONAL
FUND,

Complaint NO.

I. George Rios

residing at 151 E. 107th St., New York, New York Tel No. 289-7706.
charge ENTERPRISE ASSOCIATION, STEAMFITTERS LOCAL UNION NO. 638 OF THE U.A.; MECHANICAL CONTRACTORS ASSOCIATION OF NEW YORK, INC., AND JOINT APPRENTICESHIP COMMITTEE OF THE STEAMFITTERS INDUSTRY EDUCATIONAL FUND; whose addresses are: 8 Broadway (Tel. 674-3037), 230 Park Ave. (Tel. MU6-0940) and 75 E. 45th St. (Tel. MU5-8453), New York, New York, respectively.
with an unlawful discriminatory practice relating to employment on or about June, 1970 and continuing to by refusing to admit me to membership in Enterprise Association Steamfitters Local Union No. 638 of the U.A.

because of my AGE (), RACE (X), CREED (), COLOR (X), NATIONAL ORIGIN (X), SEX ().

The particulars are:

1. My name is George Rios and I am a Puerto Rican citizen of the United States residing in New York, New York.

2. Upon information and belief, the Defendant Enterprise Association Steamfitters Local Union #638 of UA (hereinafter referred to as the "Union") a labor union which is the exclusive referral agent for union jobs in the steamfitting industry in the New York City area.

3. Upon information and belief the Defendant Mechanical Contractors Association of New York, Inc. (hereinafter referred to as the "Association") represents the employers in the New York steamfitting industry in their relations with the Union.

4. The Defendant Joint Apprenticeship Council of the Steamfitters Industry Educational Fund is a committee composed of representatives of the Union and the Association which supervises the steamfitters apprenticeship program.

5. On February 20, 1970, I went to work as a steamfitter for the Urban Mechanical Company on a construction job located at Seventh Avenue and 125th Street, New York, New York, and I am working as a steamfitter on that job as of this date.

6. I have been informed by Mr. Frederick Clark, President of Urban Mechanical Company that he has made numerous efforts to secure membership in the Union for me and for Eugene C. Jenkins, a Negro, who works with me on this job and who also wants to join the Union. Mr. Clark informed me that he made these efforts during the period from March to June, 1970. On May 2, 1970, he wrote to the Union asking that Mr. Jenkins and I be made members. He has informed me that as of the date of this complaint he has received no response.

7. In May, 1970, I went to the office of the Union located at 841 Broadway, New York, New York. Mr. Jenkins went with me. We informed the receptionist that we wanted to become members of the Union. She told us that we should write a letter requesting application forms. We went to a nearby store and purchased writing paper and we each wrote a letter requesting application forms. We left the letters with the receptionist. I have had no response to this letter and Mr. Jenkins has told me that he has had no response.

8. Since we had no response to this letter Mr. Jenkins told me that he had written another letter to the Union in late June, 1970. To this date I have not received a response to this letter and Mr. Jenkins has told me that he has had no response.

Complainant: GEORGE KIDGEE
 Respondents: UNITED RAIL AND AMERICAN STEAMFITTERS LOCAL UNION 1021 OF NY, INCORPORATED;
 CONTRACTORS ASSOCIATION OF NEW YORK, INC. AND THE ROBERT APPRENTICE
 SHIP COMMITTEE OF THE STEAMFITTERS INDUSTRY EDUCATIONAL FUND

9. Mr. James Haughton, President of Harlem Fight-Buck, an organization of minority group construction workers of which I am a member, told me that he also wrote to the Union in late June, 1970 and asked that Mr. Jenkins and I be admitted to membership. I understand that in his letter Mr. Haughton informed the Union that he thought it was refusing to admit Mr. Jenkins and me.

10. No one has received any response whatsoever to any of the many letters addressed to the Union. Nor has there been any response to the oral requests made by Mr. Clark, Mr. Jenkins and me. The Union is obviously refusing to admit me to membership. This must be because of my race, color and national origin since I am fully capable of doing steamfitting work. In fact I had four years experience as an apartment house maintenance man where my work involved pipe fitting and plumbing work. In the summer of 1969, I went to work for Mr. Erling Rohde, a plumbing contractor. I worked for him until February, 1970, when I began my present job. He is an excellent plumbing contractor and he taught me to do plumbing and general pipe fitting. I began my present job in February, 1970. Mr. Jenkins and I have done all of the steamfitting work on this job and Mr. Clark has repeatedly told us that we are doing an excellent job. I have learned the steamfitting trade and I can do steamfitting work as well as anyone. The Union has no legitimate reason to refuse to admit me to membership.

11. If I am not admitted to membership I cannot get work on union jobs which are the vast majority of available jobs and the only jobs paying union scale wages. This will mean that when my present job ends I will not be able to get any decent work in my trade.

12. I believe that the Union's agreement with management requires that I be admitted to membership within a few days after I begin working on a union job. Mr. Clark is a party to that agreement and his job is a Union job. The Union is deliberately ignoring that agreement in order to keep me from getting work when this job ends.

13. I believe, from what I have seen and heard, that there are virtually no Negroes or Puerto Ricans in the Union.

14. I believe that the Union, if it does agree to accept me for membership will try to force me to be an apprentice for a number of years before admitting me to full membership though I am fully capable of performing all types of steamfitting work. I think that this discriminates against me on the basis of my race, color and national origin because the Union admits whites without requiring them to be apprentices or requiring it for only a short time. It also discriminates against me because apprenticeship imposes a number of barriers to work as a steamfitter which are not in any way relevant.
 (continued on attached rider which is adopted and made a part hereof)

By reason of the unlawful discriminatory practice of respondent as herein alleged, complainant has already suffered damages in the sum of \$.....

I have not commenced any civil, criminal or administrative action or proceeding in any court or administrative agency based upon the same grievance.

STATE OF NEW YORK
 COUNTY OF

vs:

George Kidgee
 (Signature of Complainant)

I, the undersigned, do hereby certify that I am the duly authorized representative of the County of New York and that I have read the foregoing complaint and the exhibits thereto and that I have caused the same to be filed for the purpose of recording the same in the County of New York.

to that work and which require workers to be over-qualified to do such work. These barriers include an age limit, a residence limit, numerous tests, unnecessary class-room and on-the-job training and an unnecessarily long period of apprenticeship training. I also believe that the Union's practice of unnecessarily restricting the size of its apprenticeship class and the number of persons admitted to membership is a discriminatory device deliberately designed to exclude minority group members and not applied when whites seek membership.

15. I am a 32 year old Puerto Rican and for the foregoing reasons I charge the defendants with violations of the New York State Human Rights Law.

CHARGE OF DISCRIMINATION

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area as soon as possible. It must be mailed within 90 days after the discriminatory act took place.

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. _____

(PLEASE PRINT OR TYPE)

1 Your Name (Mr., Mrs., Miss, etc.) Eugene Jenkins Phone Number 516-489-0000
 Street Address 83 Harriman Avenue
 City Hempstead, Long Island State New York Zip Code 11550

2 WAS THE DISCRIMINATION BECAUSE OF: (Please check one)
 Race or Color ☒ Religious Creed ☐ National Origin ☐ Sex ☐

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.
 Name Enterprise Association Steamfitters Local Union #638 of the U.A.

Street Address 841 Broadway
 City New York State New York Zip Code _____
 AND (other parties if any) Mechanical Contractors Association of New York, Inc.
230 Park Avenue, New York, N. Y.
Joint Apprenticeship Committee of the Steamfitters Industry Education Fund
75 East 45th Street, New York, New York

4 Have you filed this charge with a state or local government agency? Yes ☒ When 8 19 70 No ☐
 MONTH DAY YEAR

5 If your charge is against a company or a union, how many employees or members? Over 25 ☒ Over 50 ☐

6 The most recent date on which this discrimination took place: Month 10 Day 6 Year 70 and continue to date _____

7 Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary).

1. My name is Eugene C. Jenkins and I am a 30-year-old Negro citizen of the United States residing in Hempstead, Long Island, New York.

2. Upon information and belief, the Defendant Enterprise Association Steamfitters Local Union #638 of UA (hereinafter referred to as the "Union") is a labor union which is the exclusive referral agent for union jobs in the steamfitting industry in New York City and its surrounding areas.

3. Upon information and belief the Defendant Mechanical Contractors Association of New York, Inc. (hereafter referred to as the "Association") represents the employers in the New York steamfitting industry in their relations with the Union and represents those employers in the negotiation of the collective bargaining agreement between the Union and steamfitting industry employers.

(Continued on attached rider which is adopted and made a part hereof.)

8 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Date Oct. 16, 1970 At Eugene Jenkins
 Subscribed and sworn to before me this 16th day of October 1970
Douglas Broadwater Notary Public
 (Name) (Title)

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you get the form sworn to.

4. Upon information and belief, the Defendant Joint Apprenticeship Council of the Steamfitters Industry Educational Fund, is a committee composed of representatives of the Union and the Association. The Council supervises the steamfitters apprenticeship program and has general responsibility for establishing apprenticeship standards.

5. On February 20, 1970, I went to work as a steamfitter for the Urban Mechanical Company on a construction job located at Seventh Avenue and 125th Street, New York, New York, and I am working as a steamfitter on that job as of this date.

6. I have been informed by Mr. Frederick Clark, President of Urban Mechanical Company, that he has made numerous efforts to secure membership in the Union for me and George Rios, a Puerto Rican, who works with me on this job and who also wants to join the Union. Mr. Clark informed that he made these efforts during the period from March to June, 1970. On May 27, 1970, he wrote to the Union asking that Mr. Rios and I be made members. As of the date of this Complaint he has received no response.

7. In May, 1970, I went to the office of the Union located at 841 Broadway, New York, New York. Mr. Rios went with me. We informed the receptionist that we wanted to become members of the Union. She told us that we should write a letter requesting application forms. We went to a nearby store and purchased writing paper and we wrote a letter requesting application forms. We left the letter with the receptionist. I have had no response to that letter and Mr. Rios has told me that he has had no such response.

8. Since we got no answer to this letter, Mr. Rios and I each wrote an additional letter to the Union in late June, 1970. In these letters we stated that we felt that the Union was trying to avoid making us members and urged that the Union admit us as soon as possible.

9. Mr. James Haughton, President of Harlem Fight-Back, an organization of minority group construction workers of which I am a member, told me that he also wrote to the Union in late June, 1970 and asked that Mr. Rios and I be admitted to membership. I understand that in his letter Mr. Haughton informed the Union that he thought it was refusing to admit Mr. Rios and me.

10. No one has received any response whatsoever to any of the many letters addressed to the Union. Nor has there been any response to the oral requests made by Mr. Clark, Mr. Rios and me. The Union is obviously refusing to admit me to membership. This must be because of my race and color since I am fully capable of doing steamfitting work. In fact, I spent four years at Thomas A. Edison High School learning the plumbing and pipefitting trade. I worked from 1957 to 1959 for plumbers in New York City. From 1959 to 1963 I served in the Navy as a pipefitter. From 1963 to the time I took my present job I worked as a pipefitter. I began my present job in February,

1970. Mr. Rios and I have done all of the steamfitting work on this job and Mr. Clark has repeatedly told us that we are doing an excellent job. I have learned the steamfitting trade and I can do steamfitting work as well as anyone. The Union has no legitimate reason to refuse to admit me to membership.

11. On August 19, 1970, I filed a Complaint (a copy of which is annexed as Exhibit "A") charging substantially the same acts of discrimination against the Defendants as charged herein, with the New York State Division of Human Rights. To date the Division has made no decision on that Complaint. I request that the Equal Employment Opportunity Commission assume jurisdiction of my case.

12. If I am not admitted to membership I cannot get work on union jobs -- which are the vast majority of available jobs and the only jobs paying union scale wages. This will mean that when my present job ends I will not be able to get any decent work in my trade.

13. I believe that the Union's agreement with management requires that I be admitted to membership within a few days after I begin working on a union job. Mr. Clark is a party to that agreement and his job is a Union job. The Union is deliberately ignoring that agreement in order to keep me from getting work when this job ends.

14. I believe, from what I have seen and heard, that there are virtually no Negroes or Puerto Ricans in the Union.

15. I believe that the Union, if it does agree to accept me for membership, will try to force me to take the apprenticeship program operated jointly by the Defendants before admitting me to full membership though I am fully capable of performing all types of steamfitting work. I think that this discriminates against me on the basis of my race and color because the Union admits whites without requiring them to be apprentices or requiring it for only a short time. It also discriminates against me because apprenticeship imposes a number of barriers to work as a steamfitter which are not in any way related to that work and which require workers to be over-qualified to do such work. These barriers include an age limit, a residence limit, numerous tests, unnecessary classroom and on-the-job training and an unnecessarily long period of apprenticeship training. I believe that the apprenticeship program is established, financed and supervised by the Defendants acting in concert. I also believe that the Union's practice of restricting the number of persons admitted to its apprenticeship class and membership is a discriminatory device.

16. The apprenticeship program and the membership qualifications and restrictions imposed by all of the Defendants operate to deny access to work in the steamfitting industry in a discriminatory manner. I believe that, in practice, steamfitting industry employers do not employ workers who are not members of the Union or whom the Union will not admit to membership.

17. On October 5, 1970, a preliminary hearing was held on my case by the New York State Division of Human Rights. The Union continued to refuse to admit me to membership. As of this date I have received no information concerning the result of that hearing.

COMPLAINT (87 CIV 847)

A-41

EXHIBIT A

Complainant: ROBERT C. WATKINS Complaint No. 100
 Defendant: INTERNATIONAL ASSOCIATION OF STEAMFITTERS AND PIPEFITTERS LOCAL UNION 1638 OF NA, INCORPORATED
ASSOCIATION OF CONTRACTORS AND BUILDERS OF NEW YORK, INC., AND THE JOINT APPRAISAL
COMMISSION OF THE CITY OF NEW YORK

9. Mr. James Haughton, President of Eastern Right-Back, an organization of minority group construction workers of which I am a member, told me that he also wrote to the Union in late June, 1970 and asked that Mr. Rios and I be admitted to membership. I understand that in his letter Mr. Haughton informed the Union that he thought it was refusing to admit Mr. Rios and me.

10. No one has received any response whatsoever to any of the many letters addressed to the Union. Nor has there been any response to the oral requests made by Mr. Clark, Mr. Rios and me. The Union is obviously refusing to admit me to membership. This must be because of my race and color since I am fully capable of doing steamfitting work. In fact, I spent four years at Thomas A. Edison High School learning the plumbing and pipefitting trade. I worked from 1957 to 1959 for plumbers in New York City. From 1959 to 1963 I served in the Navy as a pipefitter. From 1963 to the time I took my present job I worked as a pipefitter. I began my present job in February, 1970. Mr. Rios and I have done all of the steamfitting work on this job and Mr. Clark has repeatedly told us that we are doing an excellent job. I have learned the steamfitting trade and I can do steamfitting work as well as anyone. The Union has no legitimate reason to refuse to admit me to membership.

11. If I am not admitted to membership I cannot get work on union jobs -- which are the vast majority of available jobs and the only jobs paying union scale wages. This will mean that when my present job ends I will not be able to get any decent work in my trade.

12. I believe that the Union's agreement with management requires that I be admitted to membership within a few days after I begin working on a union job. Mr. Clark is a party to that agreement and his job is a Union job. The Union is deliberately ignoring that agreement in order to keep me from getting work when this job ends.

13. I believe, from what I have seen and heard, that there are virtually no Negroes or Puerto Ricans in the Union.

14. I believe that the Union, if it does agree to accept me for membership, will try to force me to be an apprentice for a number of years before admitting me to full membership though I am fully capable of performing all types of steamfitting work. I think that this discriminates against me on the basis of my race and color because the Union admits whites without requiring them to be apprentices or requiring it for only a short time. It also discriminates against me because apprenticeship imposes a number of barriers to work as a steamfitter which are not in any way related to that work and which require workers to be over-qualified to do such work. Those barriers include an age limit, a residence limit, numerous tests, unnecessary classroom and on-the-job training and an unnecessarily long period of apprenticeship training. I also believe that the Union's practice of restricting the (continued on attached rider which is attached and made a part hereof)

By reason of the unlawful discriminatory practice of respondent as herein charged, complainant has already suffered damages in the sum of \$.....

I have not commenced any civil, criminal or administrative action or proceeding in any court or administrative agency based upon the same grievances.

STATE OF NEW YORK }
 COUNTY OF _____ } ss:

Robert C. Watkins
 (Signature of Complainant)

I, _____, Clerk of the County of _____, do hereby certify that the foregoing is a true and correct copy of the Complaint filed in the above entitled case.

Rider

number of persons admitted to its apprenticeship class and membership is a discriminatory device.

15. I am a 30 year old Negro and for the foregoing reasons I charge the defendants with violations of the New York State Human Rights Law.

COMPLAINT (87 CIV 847) CHARGE OF DISCRIMINATION

A-44

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area as soon as possible. It must be mailed within 90 days after the discriminatory act took place.

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. _____

(PLEASE PRINT OR TYPE)

1 Your Name (Mr., MRS., etc.) Eric O. Lewis Phone Number TO2-1428
Street Address 400 Lennox Avenue
City New York State New York Zip Code 10037

2 WAS THE DISCRIMINATION BECAUSE OF: (Please check one)
Race or Color ☒ Religious Creed ☐ National Origin ☐ Sex ☐

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.
Name Enterprise Association Steamfitters Local Union #638 of U.A.
Street Address 841 Broadway
City New York State New York Zip Code _____
AND (other parties if any) Mechanical Contractors Association of N.Y., Inc.
230 Park Avenue, New York, New York
Joint Apprenticeship Committee of the Steamfitters Industry Education Fund
75 East 45th Street, New York, New York

4 Have you filed this charge with a state or local government agency? Yes ☒ No ☐
When 10 MONTH 8 DAY 70 YEAR

5 If your charge is against a company or a union, how many employees or members? Over 25 ☐ Over 50 ☒

6 The most recent date on which this discrimination took place: Month 11 Day 12 Year 70 and conf. date _____

7 Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary).
1. My name is Eric O. Lewis and I am a 37 year old Negro citizen of the United States residing in New York, New York.
2. Upon information and belief, the Defendant Enterprise Association Steamfitters Local Union #638 of UA (hereinafter referred to as the "Union") is a labor union which is the exclusive referral agent for union jobs in the steamfitting industry in New York City and its surrounding areas.
3. Upon information and belief, the Defendant Mechanical Contractors Association of New York, Inc. (hereinafter referred to as the "Association") represents the employers in the New York steamfitting industry in their relations with the Union and represents those employers in the negotiation of the collective bargaining agreement between the Union and those employers.

(Continued on attached rider which is adopted and made a part hereof.)

8 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Date December 3, 1970

Subscribed and sworn to before me this 3RD day of December 1970

Banubilla S. Bayo
(Name)

Reverend
Is an your name?
BRUNNEN ST. BAYO
Notary Public, State of New York
No. 21-0100010 (New)
Qualified in New York City
Commission Expires March 22, 1971

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you get the form sworn to.

COMPLAINT (87 CIV 847)

A-45

4. Upon information and belief, the Defendant Joint Apprenticeship Committee of the Steamfitters Industry Educational Fund, is a committee composed of representatives of the Union and the Association. The Committee supervises the steamfitters apprenticeship program and has general responsibility for establishing apprenticeship standards.

5. In June, 1970, I went to the office of the Defendant Association. I said that I knew how to do steamfitting work and asked to be given steamfitting work. I was told that I could not do such work unless I became a member of the Union. I was told that to join the Union I would have to complete the apprenticeship program. I was also told that I probably wouldn't want to take the apprenticeship program since the pay was low.

6. In early September, 1970, I went to work as a steamfitter for the Urban Mechanical Company on a construction job located at Seventh Avenue and 125th Street, New York. There is no more work for me on this job as it is almost finished. This job was a Union job under the jurisdiction of the Defendant Union.

7. On September 30, 1970, I wrote to the Union and asked to be admitted to the Union but I have received no answer to this letter.

8. I have spoken with George Rios and Eugene Jenkins, other steamfitters who worked on the 125th Street job with me, and they have told me that they have also been denied membership in the Union and believe it is because of the Union's discriminatory admissions policy.

9. I also understand that Mr. Rios and Mr. Jenkins have frequently sought membership in the Union. All applications, including my own, by minority group members working on the 125th Street job have been ignored by the Union. The Defendant Association discouraged me from trying to join the Union.

10. I am fully capable of doing steamfitting work. I had approximately six years experience as a plumber's helper. I worked in a factory as a leadwiper from 1956 to 1958. I worked with Mr. Erling Rohde, an excellent plumbing contractor, from April, 1970 until July, 1970, part-time, and from July, 1970 to September, 1970, full-time. I did all the work assigned to me by the Urban Mechanical Company and no one expressed dissatisfaction with my work.

11. If I am not admitted to membership in the Union I cannot get work on union jobs -- which are the vast majority of available jobs and the only jobs paying union scale wages. I am not working on the Urban Mechanical Company job because it is almost finished and I cannot get steamfitting work through the Defendants.

12. I believe that the Union's agreement with management requires that I be admitted to membership within a few days after I begin working on a union job. Mr. Frederick Clark, my former employer, the President of Urban Mechanical Company, is a party to that agreement and his job was a Union job. The Union deliberately ignored that agreement in order to keep me from getting work when this job ended.

Rider (p. 2)

13. On October 8, 1970, I filed a complaint (a copy of which is annexed as Exhibit "A") charging substantially the same acts of discrimination by the Defendants as charged herein with the New York State Division of Human Rights. To date the Division has made no decision on that complaint. I request that the Equal Employment Opportunity Commission assume jurisdiction of my case.

14. I believe, from what I have seen and heard, that there are virtually no Negroes or Puerto Ricans in the Union.

15. I believe that the Union, if it does agree to accept me for membership, will try to force me to take the apprenticeship program operated jointly by the Defendants before admitting me to full membership though I am fully capable of performing all types of steamfitting work. I think that this discriminates against me on the basis of my race and color because the Union admits whites without requiring them to be apprentices or requiring it for only a short time. It also discriminates against me because apprenticeship imposes a number of barriers to work as a steamfitter which are not in any way related to that work and which require workers to be over-qualified to do such work. These barriers include an age limit, a residence limit, numerous tests, unnecessary classroom and on-the-job training and an unnecessarily long period of apprenticeship training. I believe that the apprenticeship program is established, financed and supervised by all the Defendants acting in concert. I also believe that the Union's practice of restricting the number of persons admitted to its apprenticeship class and membership is a discriminatory device.

16. The apprenticeship program and the membership qualifications and restrictions imposed by all of the Defendants operate to deny access to work in the steamfitting industry in a discriminatory manner. I believe that, in practice, steamfitting industry employers do not hire workers who are not members of the Union or whom the Union will not admit to membership.

17. On November 12, 1970, a preliminary hearing on my case was held, jointly with a second hearing on the Complaints filed by Mr. Rios and Mr. Jenkins, by the New York State Division of Human Rights. The Union continued to refuse to admit me to membership. As of this date I have received no information concerning the results of that hearing.

18. I would like to request that my Complaint be considered, together with those of Mr. Rios (# TNY 1-0450) and Mr. Jenkins (# TNY 1-0449).

COMPLAINT (87 CIV 847)

A-47

EXHIBIT A

STATE OF NEW YORK EXECUTIVE DEPARTMENT

STATE DIVISION OF HUMAN RIGHTS

on the complaint of
ERIC O. LEWIS

Complainant,

against
ENTERPRISE ASSOCIATION STEAMFITTERS
LOCAL UNION #638 OF UA, MECHANICAL CON-
TRACTORS ASSOCIATION OF NEW YORK, INC.
AND THE JOINT APPRENTICESHIP COMMITTEE
OF THE STEAMFITTERS INDUSTRY EDUCATIONAL
FUND Respondent

COMPLAINT NO.

filed 10/8/70
received by
H. C. Allen
N.Y.S. Division of Human
Rights
62 East 125th Street

I, Eric O. Lewis

residing at 1556 Minford Place, Bronx, New York 10460

Tel No. 323-4402

charge Enterprise Association, Steamfitters Local Union No. 638 of the UA; Mecha-
nical Contractors Association of New York, Inc. and Joint Apprenticeship
Committee of the Steamfitters Industry Educational Fund; whose addresses are:841 Broadway (Tel. 674-3937), 230 Park Ave. (Tel. MU6-0940) and 75 E. 45th St.
(Tel. MU5-8453), New York, New York, respectively
with an unlawful discriminatory practice relating to employment on or about September, 1970 and continuing
to date by refusing to admit me to membership in Enterprise Association Steam-
fitters Local Union No. 638 of the U.A.

because of my AGE (), RACE (X), CREED (), COLOR (X), NATIONAL ORIGIN (), SEX ().

The particulars are:

1. My name is Eric O. Lewis and I am a Negro citizen of the United States
residing in Bronx, New York.2. Upon information and belief, the Defendant Enterprise Association
Steamfitters Local Union #638 of UA (hereinafter referred to as the "Union")
is a labor union which is the exclusive referral agent for union jobs in the
steamfitting industry in New York City and its surrounding areas.3. Upon information and belief the Defendant Mechanical Contractors
Association of New York, Inc. (hereinafter referred to as the "Association")
represents the employers in the New York steamfitting industry in their
relations with the Union.4. Upon information and belief, the Defendant Joint Apprenticeship
Council of the Steamfitters Industry Educational Fund, is a committee composed
of representatives of the Union and the Association which supervises the
steamfitters apprenticeship program.5. In June, 1970 I went to the office of the Defendant Association. I
said that I knew how to do steamfitting work and asked to be given steamfitting
work. I was told that I could not do such work unless I became a member of
the Union. I was told that to join the Union I would have to complete the
apprenticeship program. I was also told that I probably wouldn't want to
take the apprenticeship program since the pay was low.6. In early September, 1970, I went to work as a steamfitter for the
Urban Mechanical Company on a construction job located at Seventh Avenue and
125th Street, New York, New York, and I am working as a steamfitter on that
job as of this date. This job is a Union job under the jurisdiction of the
Defendant Union.7. On September 30, 1970 I wrote to the Union and asked to be admitted
to the Union but I have received no answer to this letter.8. I have spoken with George Rios and Eugene Jenkins, other steamfitters
on the 125th Street job with me, and they have told me that they have also
been denied membership in the Union and believe it is because of the Union's
discriminatory admissions policy.9. I also understood that Mr. Rios and Mr. Jenkins have frequently sought
membership in the Union. All applications, including my own, by minority
group persons working on the 125th Street job have been ignored by the Union.
The Defendant Association discourages me from trying to join the Union.

Complainant: ERIC O. LEWIS

Complaint No. _____

Respondent: ENTERPRISE ASSOCIATION STEAMFITTERS LOCAL UNION 1638 of UA, MECHANICAL CONTRACTORS ASSOCIATION OF NEW YORK, INC. AND THE JOINT APPRENTICESHIP COMMITTEE OF THE STEAMFITTERS INDUSTRY EDUCATIONAL FUND.

10. I am fully capable of doing steamfitting work. I had approximately six years experience as a plumber's helper. I worked in a factory as a lead-wiper from 1956 to 1958. I worked with Mr. Erling Rohde, an excellent plumbing contractor, from April, 1970 until July, 1970 part-time, and from July 1970 to September, 1970 fulltime. I have been able to do all the work assigned to me by the Urban Mechanical Company and no one has expressed dissatisfaction with my work.

11. If I am not admitted to membership in the Union I cannot get work on union jobs-- which are the vast majority of available jobs and the only jobs paying union scale wages. This will mean that when my present job ends I will not be able to get any decent work in my trade.

12. I believe that the Union's agreement with management requires that I be admitted to membership within a few days after I begin working on a union job. Mr. Frederick Clark, my employer, the President of Urban Mechanical Company, is a party to that agreement and his job is a Union job. The Union is deliberately ignoring that agreement in order to keep me from getting work when this job ends.

13. I believe, from what I have seen and heard, that there are virtually no Negroes or Puerto Ricans in the Union.

14. I believe that the Union, if it does agree to accept me for membership, will try to force me to be an apprentice for a number of years before admitting me to full membership though I am fully capable of performing all types of steamfitting work. I think that this discriminates against me on the basis of my race and color because the Union admits whites without requiring them to be apprentices or requiring it for only a short time. It also discriminates against me because apprenticeship imposes a number of barriers to work as a steamfitter which are not in any way related to that work and which require workers to be over-qualified to do such work. These barriers include an age limit, a residence limit, numerous tests, unnecessary classroom and on-the-job training and an unnecessarily long period of apprenticeship training. I also believe that the Union's practice of restricting the number of persons admitted to its apprenticeship class and membership is a discriminatory device.

15. I am a 37 year old Negro and for the foregoing reasons I charge the defendants with violations of the New York State Human Rights Law.

16. I would like to have my complaint treated together with the complaints filed by George Rios and Eugene Jenkins with the Division on August 19, 1970.

By reason of the unlawful discriminatory practice of respondent as herein alleged, complainant has already suffered damages in the sum of \$_____.

I have not commenced any civil, criminal or administrative action or proceeding in any court or administrative agency based upon the same grievances.

STATE OF NEW YORK }
COUNTY OF NEW YORK }

ERIC O. LEWIS

1st Eric O. Lewis
(Signature of Complainant)

Subscribed and sworn to before me this _____ day of _____, 1970, at _____, New York.

COMPLAINT (87 CIV 847)

STATE OF DISCRIMINATION

A-50

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area as soon as possible. It must be mailed within 90 days after the discriminatory act took place.

This form is to be used only to file a charge of discrimination on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case file No. _____

(PLEASE PRINT OR TYPE)

1 Your Name (Mr., Mrs., Miss, etc.) WYLIE B. RUTLEDGE Phone Number UI. 7-480
Street Address 502 Grand Avenue
City Brooklyn State New York Zip Code 11238

2 WAS THE DISCRIMINATION BECAUSE OF: (Please check one)
Race or Color ☒ Religious Creed ☐ National Origin ☐ Sex ☐

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.

Name Enterprise Association Steamfitters Local Union #638 of U.A.

Street Address 841 Broadway

City New York

State New York

Zip Code _____

AND (other parties if any) Mechanical Contractors Association of New York, Inc.

230 Park Avenue, New York, New York

Joint Apprenticeship Committee of the Steamfitters Industry Educational Fund

75 East 45th Street, New York, New York

4 Have you filed this charge with a state or local government agency? Yes ☒ When 12 14 70 No ☐
MONTH DAY YEAR

5 If your charge is against a company or a union, how many employees or members? Over 25 ☐ Over 50 ☒

6 The most recent date on which this discrimination took place: Month 1 Day 31 Year 1981 and continuing to date _____

Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary).

1. My name is Wylie B. Rutledge and I am a 21-year-old Negro citizen of the United States residing in Brooklyn, New York.

2. Upon information and belief, the Defendant Enterprise Association Steamfitters Local Union #638 of UA (hereinafter referred to as the "Union") is a labor union which is the exclusive referral agent for union jobs in the steamfitting industry in New York City and its surrounding areas.

3. Upon information and belief, the Defendant Mechanical Contractors Association of New York, Inc. (hereinafter referred to as the "Association") represents the employers in the New York steamfitting industry in their relations with the Union and represents those employers in the negotiation of the collective bargaining agreement between the Union and those employers.

4. Upon information and belief, the Defendant Joint Apprenticeship Committee of the Steamfitters Industry Educational Fund is a committee

(continued on attached rider which is adopted and made a part hereof)

7 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Date Feb. 8, 1981

Wylie B. Rutledge

Subscribed and sworn to before me this _____ day of _____, 1981.

Neelima S. Dutt

N. Rutledge

If it is difficult for you to sign this, you may sign your own name and mail to the Regional Office. The Commission will sign for you.

composed of representatives of the Union and the Association. The Committee supervises the steamfitters apprenticeship program and has general responsibility for establishing apprenticeship standards and the administration of training for the steamfitting industry.

5. I received my high school equivalency diploma from a Manpower Development and Training Act program in Public School 189 in New York. During the time that I was preparing for my high school equivalency diploma, I also successfully completed a Manpower Development and Training Act welding class. In November, 1969, I took and passed an examination given by the elevator constructors' union. I worked as an elevator constructor apprentice for approximately two months. I was not allowed to complete the apprenticeship program of the elevator constructors because I was dismissed by two employers, allegedly because I missed and was late for work too frequently. I have also had experience in working as a messenger, rug cutter, employee of a dry cleaner's and mailing service employee.

6. In January, 1970, I received, by mail, a notice that, later that month, the Union would conduct a test for admission to the apprenticeship program operated by all of the Defendants. I enrolled in a class sponsored by the Joint Apprenticeship Program of the Workers Defense League which was designed to prepare me to pass the Union's test.

7. I took the test at the scheduled time and I believe I received passing grades on all aspects of that test. I believe that I was not admitted because the program accepts only a small number of the applicants.

8. I believe, from what I have seen and heard, that there are virtually no Negroes or Puerto Ricans in the Union.

9. I believe that the Union, if it does agree to accept me for membership, will try to force me to take the apprenticeship program operated jointly by the Defendants before admitting me to full membership though I am fully capable of learning to perform all types of steamfitting work in a reasonable training program. I think that this discriminates against me on the basis of my race and color because the Union admits and the Association employs whites without requiring them to first be apprentices or requiring it for only a short time. It also discriminates against me because apprenticeship imposes a number of barriers to work as a steamfitter which are not in any way related to that work and which require workers to be overqualified to do such work. These barriers include an age limit, a residence limit, numerous tests, unnecessary classroom and on-the-job training and an unnecessarily long period of apprenticeship training. I believe that the apprenticeship program is established, financed and supervised by all the Defendants acting in concert. I also believe that the practices of the Defendants in restricting the number of persons admitted to the apprenticeship class and membership is a discriminatory device. These practices constitute a continuing discrimination against me.

RIDER (P. 2)

10. The apprenticeship program and the membership qualifications and restrictions imposed by all of the Defendants operate to deny access to work in the steamfitting industry in a discriminatory manner. I believe that, in practice, steamfitting industry employers do not hire workers who are not members of the Union or whom the Union will not admit to membership.

11. I am able-bodied and intelligent and fully capable of performing steamfitting work if I am given a reasonable amount of training. I do not believe that it would be necessary for me to comply successfully with the many requirements now imposed by the Defendants in order to become capable of doing steamfitting work.

12. On December 14, 1970, I filed a Complaint (a copy of which is attached as "Exhibit A"), in which I made substantially the same allegations as contained herein, with the New York State Division of Human Rights. To my knowledge no action has been taken on that Complaint to date.

COMPLAINT (87 CIV 847)

A-53

EXHIBIT A

STATE OF NEW YORK - EMPLOYMENT DEPARTMENT

STATE DIVISION OF HUMAN RIGHTS

on the complaint of

WYLIE B. RUTLEDGE,

Complainant,

ENTERPRISE ASSOCIATION STEAMFITTERS
LOCAL UNION #638 OF UA, MECHANICAL CON-
TRACTORS ASSOCIATION OF NEW YORK, INC.
AND THE JOINT APPRENTICESHIP COMMITTEE
OF THE STEAMFITTERS INDUSTRY EDUCATIONAL FUND,
Respondents.

COMPLAINT NO.

Filed December 14, 1970

I, Wylie B. Rutledge

residing at 502 Grand Avenue, Brooklyn, New York 11238

Tel. No. UL 7-4803

charge Enterprise Association, Steamfitters Local Union #638 of the UA, Mechanical Contractors Association of New York, Inc. and Joint Apprenticeship Committee of the Steamfitters Industry Educational Fund; whose addresses are: 841 Broadway (Tel. 674-2937), 230 Park Ave. (Tel. MU 6-0940) and 75 E. 45th St (Tel. MU 5-8453), New York, New York, respectively, with an unlawful discriminatory practice relating to employment on or about January, 1970 and continuing to date by refusing to admit me to membership in Enterprise Association Steamfitters Local Union No. 638 of the UA.

because of my AGE (), RACE (X), CREED (), COLOR (X), NATIONAL ORIGIN (), SEX ().

The particulars are:

1. My name is Wylie B. Rutledge and I am a 21-year-old Negro citizen of the United States residing in Brooklyn, New York.
2. Upon information and belief, the Defendant Enterprise Association Steamfitters Local Union #638 of UA (hereinafter referred to as the "Union") is a labor union which is the exclusive referral agent for union jobs in the steamfitting industry in New York City and its surrounding areas.
3. Upon information and belief, the Defendant Mechanical Contractors Association of New York, Inc. (hereinafter referred to as the "Association") represents the employers in the New York steamfitting industry in their relations with the Union and represents those employers in the negotiation of the collective bargaining agreement between the Union and those employers.
4. Upon information and belief, the Defendant Joint Apprenticeship Committee of the Steamfitters Industry Educational Fund is a committee composed of representatives of the Union and the Association. The Committee supervises the steamfitters apprenticeship program and has general responsibility for establishing apprenticeship standards and the administration of training for the steamfitting industry.
5. I received my high school equivalency diploma from a Manpower Development and Training Act program in Public School 189 in New York. During the time that I was preparing for my high school equivalency diploma, I also successfully completed a Manpower Development and Training Act welding class. In November, 1969, I took and passed an examination given by the elevator constructors' union. I worked as an elevator constructor apprentice for approximately two months. I was not allowed to complete the apprenticeship program of the elevator constructors because I was dismissed by two employers, allegedly because I missed and was late for work too frequently. I have also had experience in working as a messenger, rug cutter, employee of a dry cleaner's and mailing service employee.
6. In January, 1970, I received, by mail, a notice that, later that month, the Union would conduct a test for admission to the apprenticeship program operated by all of the Defendants. I enrolled in a class sponsored by the Joint Apprenticeship Program of the Workers Defense League which was designed to prepare me to pass the Union's test.
7. I took the test at the school on 11/11/70 and I received passing grades on all aspects of this test. I was not admitted to the apprenticeship program because I was not a member of the Union and I was not a member of the Association.

COMPLAINT (87 CIV 847)

A-55

Complainant: WYLIE B. RUTLEDGE Complaint No. _____

Respondent: ENTERPRISE ASSOCIATION STEAMFITTERS LOCAL UNION #632 of UA, et al

8. I believe, from what I have seen and heard, that there are virtually no Negroes or Puerto Ricans in the Union.

9. I believe that the Union, if it does agree to accept me for membership, will try to force me to take the apprenticeship program operated jointly by the Defendants before admitting me to full membership though I am fully capable of learning to perform all types of steamfitting work in a reasonable training program. I think that this discriminates against me on the basis of my race and color because the Union admits and the Association employs whites without requiring them to first be apprentices or requiring it for only a short time. It also discriminates against me because apprenticeship imposes a number of barriers to work as a steamfitter which are not in any way related to that work and which require workers to be over-qualified to do such work. These barriers include an age limit, a residence limit, numerous tests, unnecessary classroom and on-the-job training and an unnecessarily long period of apprenticeship training. I believe that the apprenticeship program is established, financed and supervised by all the Defendants acting in concert. I also believe that the practices of the Defendants in restricting the number of persons admitted to the apprenticeship class and membership is a discriminatory device.

10. The apprenticeship program and the membership qualifications and restrictions imposed by all of the Defendants operate to deny access to work in the steamfitting industry in a discriminatory manner. I believe that, in practice, steamfitting industry employers do not hire workers who are not members of the Union or whom the Union will not admit to membership.

11. I am able-bodied and intelligent and fully capable of performing steamfitting work if I am given a reasonable amount of training. I do not believe that it would be necessary for me to comply successfully with the many requirements now imposed by the Defendants in order to become capable of doing steamfitting work.

12. I would like to request that my complaint be considered, together with those of Mr. Rios, Mr. Jenkins and Mr. Lewis.

By reason of the unlawful discriminatory practices of respondent as herein alleged, complainant has already suffered damages in the sum of \$.....

I have not commenced any civil, criminal or administrative action or proceeding in any court or administrative agency based upon the same grievance.

STATE OF NEW YORK
COUNTY OF _____

(Signature of Complainant)

Subscribed and sworn to before me this _____ day of _____, 1987, at _____, New York State.

Notary Public for the State of New York

COMPLAINT (87 CIV 847)

A-56

EXHIBIT B

COMPLAINT (87 CIV 847)

A-57

DETERMINATION AND ORDER AFTER INVESTIGATION

Central NO; C-21853-70

Local No: Ib-C-662-70

George Rios vs. Enterprise Association Steamfitters Local Union #638 of UA, Mechanical Contractors Association of New York Inc., and the Joint Apprenticeship Committee of the Steamfitters Industry Educational Fund

On August 18, 1970, George Rios who is 32 years old and a Puerto Rican, filed a verified complaint with the State Division of Human Rights charging the above-named respondents with an unlawful discriminatory practice relating to employment by refusing to admit him to membership because of his race and color, in violation of the Human Rights Law of the State of New York.

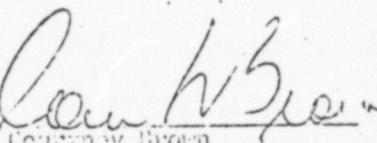
After investigation, the Division of Human Rights has determined that it has jurisdiction in this matter and that there is probable cause to believe that that respondents have engaged or are engaging in the unlawful discriminatory practice complained of.

Pursuant to Section 297.4a of the Law, this matter is hereby ordered to public hearing. A Notice of Hearing shall be issued.

DATED: December 24, 1970

STATE DIVISION OF HUMAN RIGHTS

BY


Courtney Brown
Regional Manager

COMPLAINT (87 CIV 847)

A-58

DETERMINATION AND ORDER AFTER INVESTIGATION

Central No: C-21830-70

Local No: Ib-C-596-70

Eugene C. Jenkins vs. Enterprise Association Steamfitters Local Union #638 of UA, Mechanical Contractors Association of New York Inc, and the Joint Apprenticeship Committee of the Steamfitters Industry Educational Fund

On August 18, 1970, Eugene C. Jenkins who is a 30 year old Negro, filed a verified complaint with the State Division of Human Rights charging the above-named respondents with an unlawful discriminatory practice realting to employment by refusing to admit him to membership because of his race and color, in violation of the Human Rights Law of the State of New York.

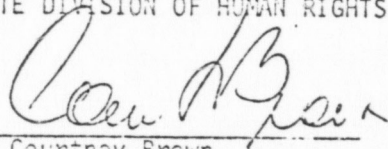
After investigation, the Division of Human Rights has determined that it has jurisdiction in this matter and that there is probable cause to believe that the respondents have engaged or are engaging in the unlawful discriminatory practice complained of.

Pursuant to Section 297.4a of the Law, this matter is hereby ordered to public hearing. A Notice of Hearing shall be issued.

DATED December 24, 1970

STATE DIVISION OF HUMAN RIGHTS

BY


Courtney Brown
Regional Manager

COMPLAINT (87 CIV 847)

A-59

DETERMINATION AND ORDER AFTER INVESTIGATION

Central No: C-2237-70

Local No: IB-C-668-70

Eric O. Lewis vs. Enterprise Association Steamfitters Local Union #638 of UA, Mechanical Contractors Association of New York, Inc. and the Joint Apprenticeship Committee of the Steamfitters Industry Educational Fund

On October 7, 1970, Eric O. Lewis who is a 37 year old Negro, filed a verified complaint with the State Division of Human Rights charging the above-named respondents with an unlawful discriminatory practice relating to employment by refusing to admit him to membership because of his race and color, in violation of the Human Rights Law of the State of New York.

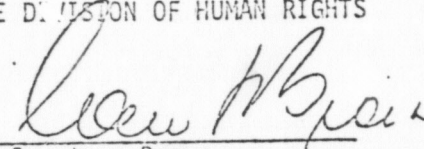
After investigation, the Division of Human Rights has determined that it has jurisdiction in this matter and that there is probable cause to believe that the respondents have engaged or are engaging in the unlawful discriminatory practice complained of.

Pursuant to Section 297.4a of the Law, this matter is hereby ordered to a public hearing. A Notice of Hearing shall be issued.

DATED: December 24, 1970

STATE DIVISION OF HUMAN RIGHTS

BY


Courtney Brown
Regional Manager

COMPLAINT (87 CIV 847)

A-60

EXHIBIT C

COMPLAINT (87 CIV 847)

A-61

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007
264-3640



FEB 11 1971

CERTIFIED
RETURN RECEIPT REQUESTED

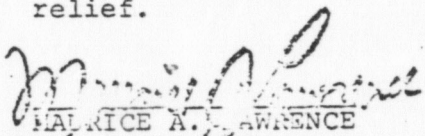
RE: Rios v. Mechanical Contractors
Ass'n of N.Y., Inc., and Enterprise
Ass'n, Steamfitters Local Union
No. 638 of the U.A.
Case No. TNY 1-0450
Rios v. Joint Apprenticeship
Committee of the Steamfitters
Industry Education Fund
TNY 1-0451

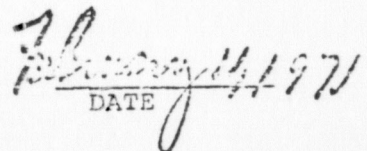
Mr. George V. Rios
c/o Dennis R. Yeager, Esq.
Center on Social Welfare Policy & Law
401 West 117th Street
New York, New York 10027

NOTICE OF RIGHT TO SUE
WITHIN 30 DAYS

Pursuant to §706(e) of Title VII of the Civil Rights Act of 1964, you are hereby notified that you may within thirty (30) days of receipt of this communication, institute a civil action in the appropriate United States District Court. If you are unable to retain an attorney, the United States District Court is authorized in its discretion to appoint an attorney to represent you and to authorize commencement of the suit without payment of fees, costs or security. If you decide to institute suit and find you need assistance, you may take this letter, along with any correspondence you have received from the Commission, to the Clerk of the United States District Court nearest to the place where the alleged discrimination occurred, and request that a Federal District Judge appoint counsel to represent you.

Please note that failure to institute suit within the thirty-day period may cause you to lose your right to seek judicial relief.


MAURICE A. LAWRENCE
Deputy Regional Director


DATE



COMPLAINT (87 CIV 847)
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007
264-3640

A-62

FEB 11 1971

CERTIFIED
RETURN RECEIPT REQUESTED

RE: Jenkins v. Mechanical Contractors
Ass'n of N.Y., Inc., & Enterprise
Ass'n Steamfitters Local Union
No. 638 of the U.A.
TNY 1-0448

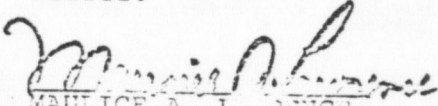
Jenkins v. Joint Apprenticeship
Committee of the Steamfitters
Industry Education Fund
TNY 1-0449

Mr. Eugene V. Jenkins
c/o Dennis R. Yeager, Esq.
Center on Social Welfare Policy & Law
401 West 117th Street
New York, New York 10027

NOTICE OF RIGHT TO SUE
WITHIN 30 DAYS

Pursuant to Section 706(e) of Title VII of the Civil Rights Act of 1964, you are hereby notified that you may within thirty(30) days of receipt of this communication, institute a civil action in the appropriate United States District Court. If you are unable to retain an attorney, the United States District Court is authorized in its discretion to appoint an attorney to represent you and to authorize commencement of the suit without payment of fees, costs or security. If you decide to institute suit and find you need assistance, you may take this letter, along with any correspondence you have received from the Commission, to the Clerk of the United States District Court nearest to the place where the alleged discrimination occurred, and request that a Federal District Judge appoint counsel to represent you.

Please note that failure to institute suit within the thirty-day period may cause you to lose your right to seek judicial relief.


MAURICE A. LAWRENCE
Deputy Regional Director


DATE

COMPLAINT (87 CIV 847)

A-63



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007
264-3640

February 9, 1971

CERTIFIED
RETURN RECEIPT REQUESTED

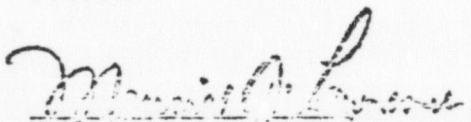
RE: Lewis v. Mechanical Contractors
Ass'n of N.Y., Inc. TNY 1-0644
Lewis v. Joint Apprenticeship
Committee of the Steamfitters
Industry Education Fund and
Enterprise Ass'n Steamfitters
Local Union No. 638 of the U.A.
TNY 1-0645

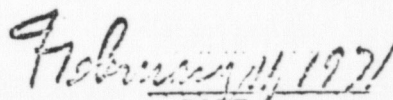
Mr. Eric O. Lewis
c/o Dennis R. Yeager, Esq.
Center on Social Welfare Policy & Law
401 West 117th Street
New York, New York 10027

NOTICE OF RIGHT TO SUE
WITHIN 30 DAYS

Pursuant to Section 706(e) of Title VII of the Civil Rights Act of 1964, you are hereby notified that you may within thirty(30) days of receipt of this communication, institute a civil action in the appropriate United States District Court. If you are unable to retain an attorney, the United States District Court is authorized in its discretion to appoint an attorney to represent you and to authorize commencement of the suit without payment of fees, costs or security. If you decide to institute suit and find you need assistance, you may take this letter, along with any correspondence you have received from the Commission, to the Clerk of the United States District Court nearest to the place where the alleged discrimination occurred, and request that a Federal District Judge appoint counsel to represent you.

Please note that failure to institute suit within the thirty-day period may cause you to lose your right to seek judicial relief.


MAURICE A. LAWRENCE
Deputy Regional Director


DATE

TESTIMONY AT HEARING ON PRELIMINARY INJUNCTION
(71 Civ. 847) 3-15-71

A-64

1 mcs

Rohdy-direct

42

2 Q Did you obtain a degree from Columbia University?

3 A No, I didn't.

4 Q Did you obtain a degree from the University of
5 California?

6 A Yes, I did.

7 Q What was that degree?

8 A Bachelor of Science in Civil Engineering.

9 Q Mr. Rohdy, have you had experience in the
10 plumbing industry?

11 A Yes.

12 Q Could you tell us about that experience, please?

13 A I grew up in the plumbing industry. My --

14 MR. KAISER: I ask that that be stricken.

15 I don't know what --

16 A My father and my uncle were plumbing contractors.

17 Q Limit this to your own personal experience.

18 Have you ever been a member of a plumbing

19 union?

20 A Yes.

21 Q When were you a member of the plumbing union?

22 A 1947.

23 Q Just during 1947?

24 A From 1947 to the present date.

25 Q You have been a member of a plumbing union at

TESTIMONY AT HEARING ON PRELIMINARY INJUNCTION
(71 Civ. 847) 3-15-71

A-65

mcs

Rohdy-direct

43

all times from 1947 until the present date?

A Yes.

Q Of what union were you a member in 1947?

A Local 230, San Diego.

Q What union are you now a member of?

A Local 2.

Q Mr. Rohdy, as a member of the plumbing union have you ever done steamfitting work?

A Yes.

Q Mr. Rohdy, are you familiar with the plaintiff in this case, Mr. George Rios?

A Yes.

Q When did you first meet Mr. George Rios?

A July 1969.

Q In what connection did you meet Mr. Rios?

A I employed him.

Q How did you employ him, Mr. Rohdy?

A I employed him as a plumber.

Q Were you a plumbing contractor at that time?

A Yes, I was.

Q Did you have a specific plumbing contract?

A Yes, I did.

Q Did you hire Mr. Rios to work for you in fulfilling that plumbing contract?

2 A Yes.

3 Q Did Mr. Rios work for you in fulfilling that
4 plumbing contract?

5 A Yes, he did.

6 Q Mr. Rohdy, in the memorandum of law which was
7 submitted by the defendant union in this case the followin
8 was stated in connection with what might happen if the
9 plaintiffs were given the preliminary relief that they
10 request:

11 "A good deal of harm can be done" --

12 MR. KAISER: I am going to object to Mr.
13 Veager --

14 THE COURT: I am going to sustain that. That
15 is not the way to ask a question.

16 Q Mr. Rohdy, did you work with Mr. Rios in
17 fulfilling the plumbing contract?

18 A Yes.

19 Q How long did Mr. Rios work for you in fulfilling
20 that contract?

21 A From July 1969 to February of 1970.

22 Q Did you ever have any reason to believe that
23 Mr. Rios would endanger his fellow workers on the job
24 because of the way that he did his work?

25 A No.

A-67

1 ncs Rohdy-direct 45

2 Q Is that job now completed, Mr. Rohdy?

3 A Yes.

4 Q Have there been any complaints about the quality
5 of that job?

6 A No.

7 Q Mr. Rohdy, are you familiar with the plaintiff
8 in this case, Mr. Lewis?

9 A Yes.

10 Q When did you first meet Mr. Lewis?

11 A In April 1969. 1970. I'm sorry.

12 Q In April of 1970?

13 A Yes.

14 Q In what connection did you meet Mr. Lewis?

15 A He was looking for employment.

16 Q Did you have a plumbing contract at that time?

17 A Yes, I did.

18 Q Did Mr. Lewis work for you on that plumbing
19 contract?

20 A Yes, he did.

21 Q Did you have any reason, when you saw Mr. Lewis
22 working, to believe he would endanger his fellow workers
23 in the work he did at that time?

24 A None.

25 Q Have you completed that job?

TESTIMONY AT HEARING ON PRELIMINARY INJUNCTION
(71 Civ. 847) 3-15-71

A-68

1 mcs Rohdy-direct 46

2 A Yes.

3 Q Have there been any complaints about the
4 quality of work on that job?

5 A None.

6 Q On the basis of your experience in the plumbing
7 industry, would you say that a person who is qualified
8 as a plumber would also be qualified to do steamfitting
9 work?

10 A Yes.

11 MR. KAISER: Objection.

12 THE COURT: What is your objection, Mr. Kaiser?

13 MR. KAISER: I don't think he is qualified to
14 testify that a plumber is capable of doing steamfitting
15 work unless he lays before the Court all of his experi-
16 ence as a plumber and steamfitter. He has testified
17 as to his plumbing experience and that he is a member of
18 Local 2, which is a plumber's local here in New York,
19 which is separate and apart from the steamfitting local
20 here in New York.

21 MR. YEAGER: I think that Mr. Rohdy has got a
22 long period of experience in the plumbing industry.
23 He has indicated for the record that he has done both
24 steamfitting and plumbing work; that he has a degree
25 in Civil Engineering from the University of California.

1 mcs

Rohdy-direct

47

2 and I believe he is qualified to give this Court his
3 opinion as to whether or not it is possible for a
4 qualified plumber to do steamfitting work.

5 THE COURT: It is not going to be very imposing
6 because I don't know a steamfitter from a first baseman,
7 to tell you the truth. I don't call a plumber a
8 steamfitter, but that doesn't mean a thing. If he just
9 says that one is qualified to do the other, if that is
10 all the evidence in the record it may have some minimal
11 weight. I would let it stand at that.

12 MR. YEAGER: The evidence or the record contains
13 some evidence on that taken from Mr. Murray.

14 THE COURT: What does he say?

15 MR. YEAGER: As to the question of whether or
16 not they have common jurisdictions in certain places.
17 I would prefer not to remember it from the top of my
18 head.

19 THE COURT: I think you ought to take Mr.
20 Kaiser's suggestion and see whether you can't qualify
21 Mr. Rohdy more impressively than you have. I don't know
22 whether civil engineers become expert in steamfitting.
23 Maybe they do.

24 How many courses in steamfitting did you take
25 at Berkley to become a civil engineer, Mr. Rohdy?

1 mcs

Rohdy-direct

48

2 THE WITNESS: You take two courses. But I have
3 worked as a steamfitter. In 1942 I worked as a steam-
4 fitter helper. I worked as a steamfitter in 1952 in
5 Paulsboro. I couldn't get work in Local 2 and I was
6 shipped out in other cities and worked as a steamfitter
7 in Paulsboro in Pennsylvania in the local that -- 230 was
8 a steamfitters-plumbers local. It was always under-
9 stood that a plumber could always do steamfitting
10 work, but that a steamfitter could not do plumbing work
11 because the plumber had to take an examination to do
12 soil and waste piping.

13 THE COURT: What does a steamfitter do?

14 THE WITNESS: A steamfitter installs -- generally
15 he installs screw pipe and he fits large piping for
16 welding, to be welded together by a welder. He installs
17 boilers, puts boilers together and does everything
18 that -- in other words, a plumber does all of these things
19 except putting the boilers together, but even a plumber
20 who works on water heaters, we can do that work, and
21 plumbers who are around boilers ought to see what has to
22 be done, and he can do it just as well.

23 I have, as an engineer -- I took all of the --

24 MR. YEAGER: No.

25 THE WITNESS: All right.

TESTIMONY AT HEARING ON PRELIMINARY INJUNCTION
(71 Civ. 847) 3-15-71

A-71

1 mcs Rohdy-direct 49

2 Q Mr. Rohdy, how many years of experience as a
3 steamfitter have you had?

4 A Combined, about two and a half.

5 Q How many years of experience as a plumber have
6 you had?

7 A About 16.

8 Q How many years as a plumbing contractor?

9 A Two and a half.

10 Q During your years as a plumber did you work on
11 the job together with steamfitters?

12 A Yes.

13 Q Did you observe the type of work that they
14 were doing, Mr. Rohdy?

15 A Yes.

9 16 Q Did you see plumbers perform the type of work
17 that was performed by steamfitters during your years
18 as a plumber?

19 A Yes.

20 Q Mr. Rohdy, at this time I would like to repeat
21 my earlier question:

22 Is it your opinion that a person --

23 THE COURT: He has already answered it.

24 MR. YEAGER: Thank you, yes.

25 THE COURT: It was just a question of trying to

TESTIMONY AT HEARING ON PRELIMINARY INJUNCTION
(71 Civ. 847) 3-15-71

A-72

1 ncs Rohdy-cross 50

2 give the answer some basis.

3 MR. YEAGER: I have no further questions of
4 Mr. Rohdy.

5 CROSS EXAMINATION

6 BY MR. SHAW:

7 Q Mr. Rohdy, would you say that an ability to
8 understand and apply basic mechanical principles is a
9 qualification that is related to the job of steamfitter?

10 A It is certainly -- it is a qualification.

11 Q Would you say the ability to work with numbers
12 and handle simple quantitative problems rapidly and
13 accurately is also a qualification of a steamfitter?

14 A Not necessarily.

15 Q How about the ability to visualize objects
16 in three dimensional space?

17 A Not necessarily.

18 MR. SHAW: Thank-you.

19 CROSS EXAMINATION

20 BY MR. KAISER:

21 Q You said that you were a member of Local 2; is
22 that correct?

23 A Yes.

24 Q Is that a plumbers local here in New York?

25 A Yes.

TESTIMONY AT HEARING ON PRELIMINARY INJUNCTION
(71 Civ. 847) 3-15-71

A-73

1 mcs Clarke-direct 59
2 gave to Mr. Rios and Mr. Jenkins?
3 A That is correct.
4 Q Has this job now been completed, Mr. Clarke?
5 A It has.
6 Q Mr. Clarke, during the time that you had Mr.
7 Lewis, Mr. Jenkins and Mr. Rios working for you, did you
8 see them working on the job?
9 A Every day.
10 Q Mr. Clarke, at any time did any of those three
11 gentlemen do anything on the job that made you afraid
12 to work with them on the job?
13 A No.
14 Q Mr. Clarke, have there been any complaints
15 concerning the work that you did on that job site?
16 A None whatsoever.
17 Q Have there been any complaints from the con-
18 tractor?
19 A None.
20 Q The owner of the building?
21 A None.
22 Q Mr. Clarke, are you a party to the collective
23 bargaining agreement with the defendant, Local 638 in this
24 case?
25 A I am.

mcs

Clarke-direct

60

Q During the time that Mr. Rios, Mr. Jenkins and Mr. Lewis were working for you, were you a party to that agreement?

A During part of the time.

Q Mr. Clark, during the time that you had Mr. Rios and Mr. Jenkins and Mr. Lewis working for you did anyone put any pressure on you to sign the collective bargaining agreement with Local 638?

A As a matter of fact, yes.

Q Would you tell me what form that pressure took, please?

MR. KAISER: If your Honor please, I am going to object. We are here on the motion of the plaintiffs for a temporary injunction to place them under the hiring hall category in a referral hall of Local 638.

The second request is to have Mr. Rutledge put in the apprenticeship program or given on the job training. It seems to me that we have gone a little far afield now. I don't think this testimony has anything to do with whether the union has a hiring hall.

THE COURT: What is the relevance of this, Mr. Yeager?

MR. YEAGER: I thought that it would be relevant to Paragraph 4 of the affidavit of Mr. Thomas J. ...

1 mes

Clarke-direct

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2 submitted in this matter in which he says:

3 "Plaintiffs Rios, Jenkins and Lewis state
4 that they were and are employed by the Urban
5 Mechanical Company and that said company is a
6 party to a collective bargaining agreement and
7 yet the said company hired the said plaintiffs
8 without going to the alleged union hiring hall.
9 I do not know in what manner the aforementioned
10 plaintiffs were hired, but the union did not
11 interfere nor impede the hiring or the work on
12 the job site."

13 THE COURT: Are you eliciting any testimony
14 that is expected to be contrary to that?

15 MR. YEAGER: Yes, your Honor.

16 THE COURT: Let's hear it. You may move to
17 strike if it proves to be irrelevant. I can't be
18 sure.

19 MR. KAISER: All right.

20 Q Mr. Clarke, I believe you were getting ready to
21 tell us the type of pressure that was brought on you to
22 sign the collective bargaining agreement with Local 638.

23 A At the job site in question, which is at
24 215 West 125th Street, work was already in progress and
25 had been for two months when a Mr. Fitzpatrick --

1 mcs Clarke-direct 62

2 THE COURT: When is this now?

3 THE WITNESS: We are talking about April 1970
4 or thereabouts.

5 THE COURT: Okay.

6 A I came on the job at this time and found a
7 gentleman harrassing the men regarding union books,
8 union membership and I --

9 Q I'm sorry. Would you tell us, Mr. Clarke,
10 exactly what you saw at that time?

11 A I saw Mr. Fitzpatrick questioning at that partic-
12 ular time Mr. Rios about his union book.

13 Q Did he ask Mr. Rios if he had a union book?

14 A He did. Mr. Rios didn't have a union book.

15 I walked over to Mr. Fitzpatrick. I told him, to calm
16 down because he was very loud and boisterous and dis-
17 respectful. I told him that at the beginning of this
18 job I had gone to 841 Broadway to inquire as to how I
19 should relate myself to the union, since the job required
20 union labor. I also told him that he walked right
21 past me and didn't even give me the courtesy of asking
22 me to have a seat. I told him that I had stayed in the
23 union office until three o'clock that afternoon and when
24 I asked the receptionist was he going to see if she
25 told me that he had already gone. She gave me some

1 ncs

Clarke-direct

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2 which I was to take to my office and have filled out and
3 he was toing to return to the job site the following
4 Monday.

5 Q This is what you told Mr. Fitzpatrick in April
6 1970 when he was asking Mr. Rios about his union book;
7 is that correct?

8 A That is correct.

9 Q Did Mr. Fitzpatrick indicate to you the fact
10 that Mr. Rios did not have a union book raised problems
11 for you concerning the execution of your contract on
12 that job site?

13 A Yes, he did.

14 Q How did he indicate that?

15 A He indicated that this was a union job and we
16 had to use union people, to which I said, "I would be
17 willing to use union people if you had any to give me."

18 Q Did a time come, Mr. Clarke, when you signed
19 a collective bargaining agreement with Local 638?

20 A Yes.

21 Q When you signed that agreement did you indicate
22 to the union that you had workers at that time working for
23 you on the job as steamfitters under their agreement?

24 A I indicated -- did I indicate that to them?

25 Q Yes, after you signed the collective bargaining

1 ACS

Clarke-direct

64

2 agreement.

3 Did you tell the union that you had people
4 working for you as steamfitters on that job site?

5 A I told the union I'd like to get permits for
6 these men to work.

11 7 Q Did you ever get any response to that?

8 A Not from Mr. Fitzpatrick. I had another
9 business agent -- he came to the job looking for me
10 around June of 1970. I told him that I had waited
11 for Mr. Fitzpatrick to come back to the job. I told him
12 that I had certain papers that he had given me to fill
13 out.

14 He said, "Well, I'll give you some more papers
15 and I'll see you Monday. You have them all filled
16 out." And he never returned.

17 Q At this time had you signed the collective
18 bargaining agreement with Local 638?

19 A Yes.

20 MR. YEAGER: I have no further questions.

21 MR. SHAW: No questions.

22 MR. RAISER: At this time I am going to move
23 to strike the witness' testimony where his answer began
24 as to the question "Was any pressure put on you?"

25 THE COURT: I will deny your motion.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

GEORGE RYCE, EUGENE C. JENKINS,
BREG O. LEWIS and WYLIE
D. KUTLEDEL,

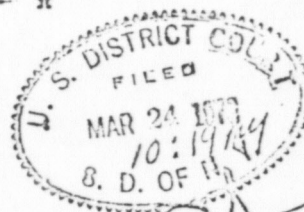
Plaintiffs,

-against-

ENTERPRISE ASSOCIATION STEAMFITTERS
LOCAL UNION No. 630 OF U.A.,
MECHANICAL CONTRACTORS ASSOCIATION
OF NEW YORK, INC. and THE JOINT
STEAMFITTING APPRENTICESHIP
COMMITTEE OF THE STEAMFITTERS',
INDUSTRY EDUCATIONAL FUND,

Defendants.

----- X



71 Civ. 847

OPINION

A P P E A R A N C E S :

Dennis R. Yeager, Esq.

E. Richard Larsen, Esq., New York, N.Y.

Attorneys for Plaintiffs

Douglas D. Broadwater, Esq.

George Cooper, Esq.

Of Counsel

Peter Kaiser, Esq., New York, N.Y.

Attorney for Defendants, Local Union No. 638 and

Union Members of Apprenticeship Committee

John A. Mcavinue, Esq.

Of Counsel

Breed, Abbott & Morgan, Esqs., New York, N.Y.

Attorneys for Mechanical Contractors Association
and Employer Members of Apprenticeship
Committee

Lloyd V. Almirall, Esq.

Thomas A. Shaw, Jr., Esq.

Michael C. Davine, Esq.

Of Counsel

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FRANKEL, D.J.

The four plaintiffs, three black and one Puerto Rican, charge that they have suffered denials of employment and lost other advantages of union membership because of unlawful discriminations on account of race and national origin. They bring this suit for themselves and for the class of persons they describe as being similarly situated. Their complaints appear to be primarily against defendant Union, Enterprise Association Steamfitters Local Union #528 of U.A., but they charge wrongs also by defendant Mechanical Contractors Association of New York, Inc., an employer group, and by defendant Joint Steamfitting Apprenticeship Committee of the Steamfitters' Industry Educational Fund, an employer-union entity. As substantive bases for their claims, plaintiffs invoke the relatively ancient and general civil rights provisions of 42 U.S.C. §§1981 and 1983, along with Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. The Court's jurisdiction is rested upon 28 U.S.C. §§1343, 2201 and 2202.

Simultaneously with the filing of their complaint, plaintiffs brought by order to show cause a motion for a preliminary injunction. In addition to affidavits

and exhibits from both sides, the court has heard the live testimony of five witnesses called by plaintiffs, one of whom was also deposed between the noticing and the return date of the motion. Defendants offered no such additional evidence. Upon the record thus made, and solely for the question of temporary relief now decided, the court states the following findings and conclusions:

Defendant Local Union serves as a collective bargaining representative for steamfitters employed in the construction industry in the New York City metropolitan area. By its agreement with defendant Contractors Association, the Union engages to "furnish to the members of the * * * Association all the competent steamfitters and apprentices which they demand * * *." To implement this arrangement, the Union keeps its "books of membership" open for transfers of workers from other locals, and supplies the employer group with current membership lists. In addition to these explicit arrangements, business agents of the Union serve the members who need jobs, at least by supplying information as to openings. Moreover, the Union purports to screen people for competence in accepting them for membership, so that the status of member serves in some measure as a

certification of suitability to prospective employers. Finally, while it is not critical for present purposes and therefore not necessary to pursue in detail, there is evidence of union pressure upon both contractors and workers to discourage the employment of non-union men for jobs as steamfitters.

It seems plain, in sum, that membership in defendant Union is a substantial help, and non-membership a substantial detriment, in obtaining and keeping employment in the steamfitting industry. And this is the central concern of three of the four plaintiffs now before the court who contend that they are qualified and experienced as steamfitters, but denied the benefits of union membership because of their race or national origin. George Rios is of Puerto Rican ancestry; Eugene C. Jenkins and Eric O. Lewis are Negroes. They range in age from 30 to 37. All three have had substantial training as steamfitters and plumbers, mainly on the job, and, in Jenkins's case, in school and in military service as well. All three have worked for substantial periods as steamfitters, proving themselves competent at the work.

While these three plaintiffs have worked in the steamfitting industry, and were reported to be so

employed at the time of our evidentiary hearing, they have suffered, and they face, periods of unemployment which would in all probability have been (or will be) shortened by the advantages of information and other assistance flowing from membership in defendant Union. They have sought such membership in vain. The Union, as is reflected dramatically in its overwhelmingly white and non-Spanish membership¹ contrasted with the composition of the working population in its area, has followed a course of racial discrimination over the years. Cf. Parham v. Southwestern Bell Telephone Co., 433 F.2d 421, 426 (8th Cir. 1970), and cases cited therein; Jones v. Lee Way Motor Freight, Inc., 431 F.2d 245 (10th Cir. 1970); United States v. Hayes International Corporation, 415 F.2d 1038, 1043/ (5th Cir. 1969). The same animus, now plainly unlawful if it was ever otherwise, has prompted the denial of membership to plaintiffs Lewis, Rios and Jenkins. The Union has repeatedly failed to respond to the requests for application forms or for admission made by these three plaintiffs. Plaintiff Lewis, when he went to the office of defendant Mechanical Contractors Association of New York, Inc., was told that he did not meet union qualifications.² But before this court

the defendants have made no attempt to rebut the strong evidence from plaintiffs and their past and present employers that they are fully qualified to perform a steamfitter's job.³ Further evidence of the Union's discriminatory behavior appeared in the uncontradicted testimony of Frederick Clarke, a contractor for whom plaintiffs Rios, Jenkins and Lewis were employed as steamfitters in 1970. Clarke testified that a business agent from defendant Union visited his Harlem work site in April 1970, questioned Rios about not having a Union book, and told Clarke that he had to hire Union men. Clarke asked the Union agent to issue permits for the non-union men then working at the site, but there was never any action on this request, although Clarke himself eventually signed a collective bargaining agreement with the Union.

The record as it is now made is convincing that the Puerto Rican ancestry of Rios and the skin color of Lewis and Jenkins in fact explain their exclusion from the Union.

It is not disputed that these plaintiffs have duly and meticulously pursued the administrative remedy

of attempted conciliation provided by Title VII of the 1964 Civil Rights Act, 42 U.S.C. §2000e-5. They have received requisite letters from the Equal Employment Opportunity Commission authorizing the institution of the present suit. 42 U.S.C. §2000e-5(e). And they have, as the foregoing findings show, demonstrated a large probability of ultimate success in proving the violations Congress has denounced.

The Union, on the other hand, reveals, and indeed insists upon, factors that tilt the balance of the equities still farther toward the plaintiffs. The Union denies that it operates a hiring hall. It goes on to urge, unsuccessfully but revealingly, that union membership is not at all relevant to the obtaining of employment, this being handled on his own by each man (there are said to be no woman steamfitters, and this is not here in question). Union counsel suggested in argument, however, that the worth of the Union's imprimatur will suffer if unqualified workers are "held out" as competent steamfitters by virtue of their membership. Thus, the Union essentially concedes that membership may be of substantial utility in gaining employment, if only because employers interpret membership as a sign of competence. There is, in all these circumstances, no reason for serious concern about the Union's

reputation, since the indications are that Rios, Jenkins and Lewis are amply qualified. In sum, the dubious and speculative injuries to the Union from a temporary injunction are solidly outweighed by the harm the three qualified plaintiffs would suffer from its denial. The preliminary relief they seek will be granted. Cf. Local 53 of Int. Ass'n of Heat & Frost T. & A. Wks. v. Venglor, 407 F.2d 1047 (5th Cir. 1960); United States v. Hayes International Corporation, 415 F.2d 1039 (5th Cir. 1969).

Different questions are presented, and a different result is reached, in the case of the remaining plaintiff, Wylie B. Rutledge. Rutledge is 21 years old, black, and, according to his affidavit, possessor of a high school equivalency diploma. He has for some time been enrolled in a program for recruitment and training of young minority group workers for jobs in construction industry apprenticeship programs. In November, 1969, he took and passed an examination given by the elevator constructors' union. He went to work as an apprentice for two months thereafter. Then, his affidavit says: "I was not allowed to complete the apprenticeship program of the elevator constructors because I was dismissed

by two employers, allegedly because I missed and was late for work too frequently." His affidavit also describes some miscellaneous work experience unrelated to the construction industry and to the issues in this case.

In January, 1970, Rutledge received notice of a forthcoming examination for admission to defendant Apprenticeship Committee's apprenticeship program. The examination, originally devised and run for the Committee by New York University, and administered since 1967 by Stevens Institute of Technology, embraces four tests - in "verbal meaning," "number facility," "mechanical comprehension," and "spatial relations." Rutledge enrolled in a class run by the Workers Defense League to help prepare for the examination, which he then took on January 31, 1970. In his affidavit he says:

"I took the test at the scheduled time and I believe I received passing grades on all aspects of that test. I believe that I was not admitted because the program accepts only a small number of the applicants."

Contrary to Rutledge's assertion, the record before the court shows that he failed a critical portion of the examination, and was so informed over a year ago on

February 20, 1970. As the notice to him stated, the requirement was to score above the lowest 25% of those taking the examination. Rutledge met the requirement with respect to verbal meaning, number facility, and spatial relations - the three components which, in the order listed, are surfacially most suspect as subjects for testing prospective steamfitters. He fell at the 18th percentile, however, on mechanical comprehension.

The record is less than complete or completely satisfying with respect to the test and its effect. The picture may change markedly after the case is fully tried. Upon the present record, however, there is no evidence that the test operates or has operated "to disqualify Negroes at a substantially higher rate than white applicants * * *." Griggs v. Duke Power Company, ___ U.S. ___ (slip op. pp. 1, 5-6). Since plaintiff Rutledge does not provide the basis for any finding that the test is "discriminatory in operation" (id. at 6), there may be no need to assess in detail whether defendants have met the burden of showing that test performance is related to job performance. Id. at 8; 42 U.S.C. §2000e-2(h); 35 Fed. Reg. 12333 (Aug. 1, 1970). Even as to that, however, the present record weighs

against Rutledge. The evident relevance of mechanical comprehension to the work in question, the buttressing of this point by a witness for plaintiffs, and the sponsorship of the examination all indicate that it is fairly and aptly designed for a legitimate purpose. Whether defendants must show more to meet the burden when the case has been fully tried is a matter to consider later.⁴

In short, the most basic and decisive factor against Rutledge on the present motion is the weakness of his case on the merits. He has other difficulties as well. Rutledge knew or should have known over a year ago that he had been rejected on the ground of his insufficient test score. He evidently did nothing until December 14, 1970, when he complained to the New York State Division of Human Rights. Then, on February 16, 1971, he complained to the United States Equal Employment Opportunity Commission, long after expiration of the 210-day period prescribed by 42 U.S.C. §2000e-5(d). Having tardily invoked that remedy, he suddenly moved with an ill-timed burst of speed, joining in this suit before expiration of the 60-day period and the Commission notification required by 42 U.S.C. §2000e-5(e) and applicable regulations.⁵

Thus, having come finally to seek relief under Title VII of the Civil Rights Act of 1964, plaintiff has managed, at least until now, to generate large, possibly decisive, procedural obstacles to his success in this enterprise. Rutledge argues, however, that he is not confined to Title VII, and that his claim may be sustained under older sections of Title 42, namely §§1901 and 1903. Whether or not it will ultimately prevail in this case, there is substance in the contention that either or both of those statutes may now be seen to outlaw racial discrimination in employment. But while the existence of Title VII, with its specific and detailed administrative remedies, does not appear to preclude the use of the alternative statutes, Sanders v. Dobbs Houses, Inc., 431 F.2d 1097 (5th Cir. 1970), cert. denied, ____ U.S. ____ (March 1, 1971). cf. Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 237 (1970), it has been held that a plaintiff may have to present some reasonable justification for bypassing the administrative forum, Waters v. Wisconsin Steel Works of International Harvester Company, 427 F.2d 476, 481, 487 (7th Cir.), cert. denied sub nom United Order

of Bricklayers and Stone Masons, Local 21 v. Wataza, 400 U.S. 911 (1970); State of Washington v. Daugh Construction Co., 313 F. Supp. 593 (W.D. Wash. 1969); cf. Young v. International Telephone & Telegraph Co., 39 U.S.L.W. 2489, 3rd Cir., Feb. 11, 1971, but see Sanders v. Dobbs Houses, Inc., supra. And even if the complete bypassing of the EEOC may be allowable, it does not follow that a plaintiff may invoke the help of that agency and then short-circuit its efforts by premature resort to the federal court.⁶

The shape of Rutledge's case on the preliminary motion now before the court makes this a particularly unsuitable occasion for allowing suit while the procedures of the EEOC remain to be completed. As things appear thus far, Rutledge will not succeed in showing racial discrimination as a matter of fact. It will be time enough if he ultimately proves such conduct, and if the obvious and specific remedies of Title VII should then be held to be foreclosed, to consider whether the suggested alternatives are available to him as a matter of substantive law.

For the reasons stated, the motion of plaintiff Rutledge will be denied. A preliminary injunction will issue in favor of plaintiffs Rios, Jenkins and Lewis.⁷ restraining defendant Union from denying them union membership

on terms and conditions, and with rights, privileges and responsibilities, equal to those of all other members enjoying the status of full journeymen, without regard to race or national origin.⁸

Settle order on notice.

Dated: New York, New York
March 24, 1971

Maurice E. Frankel
U.S.D.J.

FOOTNOTES:

1. Of approximately 4,000 persons in the building trades branch of the Union, 20 are black and 13 have Spanish surnames.
2. According to his affidavit, in uncontradicted portions which the court credits, Lewis was told that "to join the Union I would have to complete the apprenticeship program. I was also told that I probably wouldn't want to take the apprenticeship program since the pay was low." In contrast with that pattern of deterrence, Union President Tom Murray stated in his deposition that only one-third of the Union's members have gone through the apprenticeship program.
3. Defendants argue that, at best, plaintiffs are experienced as plumbers not steamfitters. The evidence shows, however, that plaintiffs have substantial experience doing both plumbing and steamfitting work. Moreover, on the present record it appears that the two jobs are similar and that a plumber is qualified to do most if not all the work of a steamfitter. Defendants have offered no evidence which refutes the conclusion on this point of plaintiffs' experienced witness.

Section 158 of the Union Constitution requires an applicant for membership to show that he has had "at least five (5) years actual practical working experience in the plumbing [emphasis added] and pipefitting industry." It is questionable whether plaintiffs Lewis and Rios could meet this qualification, although plaintiff Jenkins would appear to. However, while the argument is made (and rejected by this court) that plaintiffs are not experienced enough as steamfitters, there has been no suggestion on the Union side that this five-year provision of the Union Constitution played any part in the exclusion of any of these plaintiffs. In addition, in an industry where racial discrimination has been practiced for years, a rigid five-year work experience requirement which perpetuates the effects of prior discrimination may well violate Title VII. Cf. Local 53 of Int. Ass'n of Boat & Frost I. & A. Wks. v. Veqler, 407 F.2d 1047, 1054-55 (5th Cir. 1969); Dobbins v. Local 212, International Bro. of Elec. Wks., 292 F. Supp. 413, 445 (S.D. Ohio 1960);

Footnote 3 cont'd

United States v. Sheet Metal Wks. Int. Ass'n, Local U. 15, 416 F.2d 123, 133 (6th Cir. 1969); Local 189, United Brotherhood of Carpenters v. United States, 416 F. 2d 900 (6th Cir. 1969), cert. denied, 397 U.S. 919 (1970); Parham v. Southwestern Bell Telephone Co., 433 F.2d 421, 423-27 (6th Cir. 1970).

4. While defendants may have to demonstrate more upon a full record - for example, a more particularized relationship between the written test and "successful performance of the jobs for which it is used," and perhaps even a "study" demonstrating the connection, Griggs v. Duke Power Company, supra at 8 - there are also other things potentially adverse to Rutledge. His claims, and ought to be held to the claim, that he has the equivalent of a high school education. For what it may be worth, the fairness of putting Rutledge to a written test may differ from a case like Griggs, arising in an environment of segregated schooling. Id. at 5-6. But cf. Taylor v. Board of Education of City School District of New Rochelle, 197 F. Supp. 181 (S.D.N.Y.) 294 F.2d 35 (2d Cir.), cert. denied 368 U.S. 940 (1961). In any event, it should be noted that since Rutledge claims he has a high school equivalency diploma, he is not in a position to suffer whatever discriminatory effects might follow from the requirement that an apprenticeship applicant submit a high school diploma or equivalency certificate. Parham v. Southwestern Bell Telephone Co., 433 F.2d 421, 427-28 (6th Cir. 1970).
5. 42 U.S.C. §2000e-5(e) provides that a civil action may be brought thirty days after a charge is filed with the Commission, "except that * * * such period may be extended to not more than sixty days upon a determination by the Commission that further efforts to secure voluntary compliance are warranted * * *." The Commission has issued regulations permitting it to consider and attempt conciliation in all cases for the full 60 days after the filing of a charge. 29 C.F.R. §1601.25a.
6. The cases cited above discuss the application of 42 U.S.C. §1981 to claims of racial discrimination by unions or private employers. Plaintiffs cite no authority supporting their reliance upon 42 U.S.C. §1983, and there is no need at this stage to explore the possible application of that statute.

7. The four plaintiffs, despite the different situation of knowledge, undertook to sue on behalf of a single "class." In the brief time from the filing of suit to the hearing of the instant motion, there has been no proceeding under Fed. R. Civ. P. 23(c) and our local Civil Rule 11A to determine whether the suit may be so maintained and, if so, how the alleged class is to be defined. It seems orderly and, indeed, necessary, therefore, to rule only with respect to the named plaintiffs, postponing for another time any possible impact upon others who may turn out to be similarly situated.
8. Plaintiffs' prayer sought to compel the Union "to place them in the highest hiring hall referral category and * * * to refer them for steamfitting work as if they were full journeymen in the highest hiring hall referral category." There is, at least thus far, no showing that the Union operates what may literally be called a "hiring hall." However, there is evidence, sketched above, of specific and measurable union influence upon the getting and keeping of jobs. It may well be - and the Union should know best - that this impact is broader and more concretely detailed than has thus far appeared. Considering the nature of the subject matter, the distribution of the pertinent knowledge, and the relatively precise focus upon employment and employment opportunities, it seems fitting that the injunction should be formulated in terms that require the Union simply to give plaintiffs no less of the things in question than it gives to other members. Within these directions there should be enough from which the parties can propose a decree fully comprehensible to those who must obey it. Cf. Longshoremen v. Marine Trade Assn., 309 U.S. 64, 76 (1937); Developments in the Law - Injunctions, 70 Harv. L. Rev. 994, 1066 (1955). Of course, the court does not sit in equity to trap the innocent unwary. If there are genuine problems of construction, they may be tendered in all good conscience for such declaratory guidance as may be necessary in the absence of an agreed course charted in good-faith consultations between the parties. See Regal Knitwear Co. v. Board, 324 U.S. 9, 15 (1945).

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

GEORGE RIOS, EUGENE C. JENKINS,	:	
ERIC O. LEWIS AND WYLIE B. RUTLEDGE,	:	
	:	
Complainants,	:	
	:	
- against -	:	
	:	ANSWER
ENTERPRISE ASSOCIATION STEAMFITTERS	:	
LOCAL UNION No. 638 of U.A.; MECHANICAL	:	
CONTRACTORS ASSOCIATION OF NEW YORK,	:	71 CIV. 847
INC. and THE JOINT STEAMFITTING	:	
APPRENTICESHIP COMMITTEE OF THE	:	
STEAMFITTERS' INDUSTRY EDUCATIONAL FUND	:	
	:	
Respondents.	:	

Defendants ENTERPRISE ASSOCIATION STEAMFITTERS LOCAL No. 638 of U.A. (hereinafter referred to as "Union") and the Union members of the JOINT STEAMFITTING APPRENTICESHIP COMMITTEE answers the plaintiffs' complaint as follows:

FIRST DEFENSE

Plaintiffs fail to state a claim upon which relief can be granted.

SECOND DEFENSE

Answering the allegations of Paragraph 1 defendants herein deny that this suit is authorized by Title VII of the Civil Rights Act of 1964 (42 U.S.C. Section 2000e, et seq.), 42 U.S.C. Section 1981, 42 U.S.C. Section 1983, or the United States Constitution; that defendants herein have deprived the plaintiffs of any rights; that this suit states a cause of action for injunctive and declaratory relief; that immediate and irreparable damage has been caused the plaintiffs by defendants herein; that plaintiffs represent a class and defendants herein deny the remaining allegations of Paragraph 1.

Answering the allegations of paragraph 3 defendants herein admit that plaintiffs brought this action on their behalf but deny the remaining allegations of paragraph 3.

Answering the allegations of paragraph 4 defendants herein deny that plaintiffs Rios, Jenkins and Lewis are fully qualified steamfitters; deny that Plaintiff Rutledge is capable of doing steamfitting work; deny that plaintiffs will fairly and adequately protect the interests of their alleged class and that their claims are typical of the claims of the other members of their alleged class; deny having any knowledge or information sufficient to form a belief as to whether Plaintiff Rios is a Puerto Rican citizen of the United States residing in New York, New York, or whether Plaintiff Jenkins is a citizen of the United States residing in Hempstead, New York, or whether Plaintiff Lewis is a citizen of the United States residing in New York, New York, or whether Plaintiff Rutledge is a citizen of the United States residing in Brooklyn, New York.

Answering the allegations of paragraph 5 defendants herein deny that there are common questions of law between the plaintiffs and the alleged class; deny that any acts of defendants herein deprived plaintiffs of any rights secured them by the United States Constitution, 42 U.S.C. Section 1981, 42 U.S.C. Section 1983 and 42 U.S.C. Section 2000e, et. seq.

Defendants herein deny the allegations of paragraph 6.

Answering the allegations of paragraph 7 defendants herein admit that defendant Union is a labor union organized for the purpose of collective bargaining, inter alia, but deny the remaining allegations of paragraph 7.

Answering the allegations of paragraph 8 defendants herein deny that the defendant Union has agreed with defendant Mechanical Contractors Association of New York, Inc., to any referral or apprenticeship arrangements and deny that these defendants control access to union jobs in the New York metropolitan area.

Answering the allegations of paragraph 9 defendants herein admit the allegations therein except deny that the Committeemen are representatives of the Union and Association.

Answering the allegations of paragraphs 10 and 11 defendants herein deny that Plaintiff Rios had experience with steamfitting and pipe fitting as an apartmenthouse maintenance worker and deny having any knowledge or information sufficient to form a belief as to the remaining allegations of paragraphs 10 and 11.

Answering the allegations of paragraphs 12 and 13 defendants herein deny that Plaintiff Jenkins had experience in pipe fitting and steamfitting as a plumber and deny having any knowledge or information sufficient to form a belief as to the remaining allegations of paragraphs 12 and 13.

Answering the allegations of paragraph 14 defendants herein deny having any knowledge or information sufficient to form a belief.

Answering the allegations of paragraphs 15, 16 and 17 defendants herein deny having any knowledge or information sufficient to form a belief.

Answering the allegations of paragraph 18 defendants herein admit that Urban Mechanical Company signed a collective bargaining

agreement but deny the remaining allegations of paragraph 18.

Answering the allegations of paragraph 22 defendants herein deny having any knowledge or information sufficient to form a belief.

Defendants herein deny the allegations of paragraph 23.

Answering the allegations of paragraphs 25 and 26 defendants herein deny plaintiff Rutledge is capable of doing steamfitting work and deny having any knowledge or information sufficient to form a belief as to the remaining allegations of paragraphs 25 and 26.

Answering the allegations of paragraph 27 defendants herein admit that plaintiff Rutledge sought admission to the apprenticeship program but deny the remaining paragraphs of paragraph 27.

Answering the allegations of paragraph 29 defendants herein admit that charges were filed by the plaintiffs but deny the remaining allegations of paragraph 29.

Answering the allegations of paragraph 30 defendants herein admit that preliminary conferences were held but deny the remaining allegations of paragraph 30.

Answering the allegations of paragraph 32 defendants herein deny having any knowledge or information sufficient to form a belief.

Answering the allegations of paragraph 33 defendants herein deny having any knowledge or information sufficient to form a belief.

Defendants herein deny the allegations of paragraph 34.

Answering the allegations of paragraph 35 defendants herein admit that there are age and residence and test requirements for admission to the apprenticeship program and also classroom instruction and on-the-

job training but deny the remaining allegations of paragraph 35.

Answering the allegations of paragraph 36 defendants herein admit that the Union has approximately 4000 members but deny the remaining allegations of paragraph 36.

Answering the allegations of paragraph 37 defendants herein admit that pursuant to law it is the collective bargaining agent for its members but deny the remaining allegations of paragraph 37.

Answering the allegations of paragraph 38 defendants herein admit that they operate the apprenticeship program pursuant to and in compliance with the applicable state and federal law.

ANSWERING THE FIRST CAUSE OF ACTION

Defendants herein deny the allegations of paragraph 39.

ANSWERING THE SECOND CAUSE OF ACTION

Defendants herein deny the allegations of paragraph 40.

ANSWERING THE THIRD CAUSE OF ACTION

Defendants herein deny the allegations of paragraph 41.

ANSWERING THE FOURTH CAUSE OF ACTION

Defendants herein deny the allegations of paragraph 42.

THIRD DEFENSE

The claim of Plaintiff Rutledge is time barred in that he did not file a claim with the United States Equal Employment Opportunity Commission within 210 days next of the date of the alleged discriminatory act of defendants. 42 U.S.C. 2000-5 (e).

FOURTH DEFENSE

The claim of Plaintiff Rutledge is barred in that he failed to secure the "30 day permission to sue letter" from the United States Equal Employment Opportunity Commission.

WHEREFORE, defendant herein respectfully pray that the complaint be dismissed and that the Court allow costs and a reasonable attorney's fee.

14 Peter Kaiser

PETER KAISER
Attorney for Defendants
ENTERPRISE ASSOCIATION
STEAMFITTERS LOCAL No. 638
of U.A. and Union Members of the
JOINT STEAMFITTING APPRENTICESHIP
COMMITTEE
1440 Broadway
New York, New York 10018
(212) LO. 5-5040

TO: DENNIS R. YEAGER
E. RICHARD LARSON
Attorneys for Plaintiffs
401 West 117 Street
New York, New York 10027

Breed, Abbott and Morgan
1 Chase Manhattan Plaza
New York, New York 10005

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

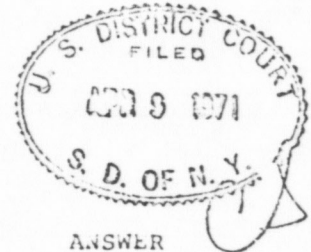
-----X
GEORGE RIOS, EUGENE C. JENKINS, :
ERIC O. LEWIS and WYLIE B. RUTLEDGE, :

Plaintiffs, :

-against- :

ENTERPRISE ASSOCIATION STEAMFITTERS :
LOCAL UNION #638 OF U.A.; MECHANICAL :
CONTRACTORS ASSOCIATION OF NEW YORK, :
INC. and the JOINT STEAMFITTING :
APPRENTICESHIP COMMITTEE OF THE :
STEAMFITTERS' INDUSTRY EDUCATIONAL :
FUND, :

Defendants. :



ANSWER

71 Civ. 847

-----X
Defendants Mechanical Contractors Association of
New York, Inc. (hereafter "MCA") and Employer Members of the
Joint Steamfitting Apprenticeship Committee of the Steamfitters'
Industry Educational Fund, by their attorneys, Breed, Abbott &
Morgan, answering the complaint, allege:

1. Deny each and every allegation contained in paragraphs "1", "3", "5", "6", "22", "35", "39", "40", "41" and "42" of the complaint.
2. Deny knowledge or information sufficient to form a belief with respect to each and every allegation set forth in paragraphs "4" and "26" and deny each and every allegation contained in paragraph "27" of the complaint except aver that plaintiff Rutledge, in January, 1970, took the qualifying examination for admission to the apprenticeship program operated by the Joint Steamfitting Apprenticeship Committee and failed to achieve the minimum qualifying score on the Mechanical Comprehension Aptitude Test forming a part of the said examination.
3. Deny each and every allegation contained in

paragraphs "7" and "8" of the complaint except admit that there is presently in force and effect a collective bargaining agreement between defendant Union as collective bargaining agent and defendant MCA as an organization representing steamfitting industry employers, and respectfully refer to the said agreement for its terms.

4. Admit the allegations of paragraph "9" of the complaint except deny that the Employer Members of the Joint Steamfitting Apprenticeship Committee are representatives, agents or employees of MCA.

5. Deny knowledge or information sufficient to form a belief with respect to each and every allegation contained in paragraphs "10" through "21", inclusive, "23", "24", "25", "28", "33", "34", "36" and "37."

6. Deny knowledge or information sufficient to form a belief with respect to each and every allegation contained in paragraphs "29" through "32" of the complaint except respectfully refer to documents filed with or issued by the governmental agencies named therein for their respective terms.

7. Deny each and every allegation contained in paragraph "38" of the complaint except admit that the apprenticeship program is operated in compliance with State and Federal law and regulations pursuant thereto.

AS A FIRST AFFIRMATIVE
DEFENSE IN BEHALF OF
DEFENDANT MECHANICAL
CONTRACTORS ASSOCIATION
OF NEW YORK, INC.:

8. The complaint fails to state a claim against defendant MCA upon which relief can be granted.

AS A SECOND AFFIRMATIVE
DEFENSE IN BEHALF OF
DEFENDANT EMPLOYER MEMBERS
OF THE JOINT STEAMFITTING
APPRENTICESHIP COMMITTEE:

9. The complaint fails to state a claim against defendant Employer Members of the Joint Steamfitting Apprenticeship Committee.

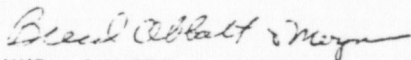
AS A THIRD AFFIRMATIVE DEFENSE:

10. Plaintiff Rutledge has failed to exhaust his administrative remedies before the United States Equal Employment Opportunity Commission and the New York State Division of Human Rights.

AS A FOURTH AFFIRMATIVE DEFENSE:

11. Plaintiff Rutledge failed to file his claims with the United States Equal Employment Opportunity Commission within 210 days after the alleged unlawful employment practice occurred as required by 42 USC §2000e-5(d).

WHEREFORE, defendants Mechanical Contractors Association of New York, Inc. and Employer Members of the Joint Steamfitting Apprenticeship Committee of the Steamfitters' Industry Educational Fund respectfully pray for judgment dismissing the complaint together with the costs, disbursements and reasonable attorneys' fees.


BREED, ABBOTT & MORGAN
Attorneys for Defendants
Mechanical Contractors Association
of New York, Inc. and Employer
Members of the Joint Steamfitting
Apprenticeship Committee of the
Steamfitters' Industry Educational
Fund
Office and P. O. Address
1 Chase Manhattan Plaza
New York, New York 10005

ORDER OF FRANKEL, J., GRANTING PRELIMINARY RELIEF

A-105

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GEORGE RIOS, et al.,

Plaintiffs,

-against-

ENTERPRISE ASSOCIATION STEAMFITTERS
LOCAL UNION #638 OF U.A., et al.,

Defendants.

: 71 Civ. 847

: ORDER

:

----- x

Plaintiffs having moved by order to show cause, dated February 26, 1971, for an order providing for a preliminary injunction (1) restraining the Enterprise Association, Steamfitters Local Union #638 of U.A. from discriminating against plaintiffs, Rios, Jenkins and Lewis, and members of their class by refusing to place them in the highest hiring hall referral category and by refusing to refer them for steamfitting work as if they were full journeymen in the highest hiring hall referral category, and (2) restraining the Union, Mechanical Contractors Association of New York, Inc., and the Joint Steamfitting Apprenticeship Committee of the Steamfitters' Industry Educational Fund from discriminating against plaintiff Rutledge and members of his class by refusing to admit them to the steamfitters' apprenticeship program operated by the defendants; and the court having taken oral testimony at a hearing held herein on March 15, 1971, and having read and filed the affidavits and exhibits submitted in support of said motion and in opposition thereto; and after due deliberation, and after rendering and

filing the opinion of this court, on March 24, 1971;
it is hereby

ORDERED that, without payment of any initiation fee at this time, but reserving for final decision in this action the question whether, such payment shall be required as a condition of continued membership, and the amount thereof, if any, plaintiffs Rios, Jenkins and Lewis be admitted to full journeyman membership status in the Building and Construction Trades Branch of the Union with rights, privileges and responsibilities equal to those of all other members enjoying full journeyman status, these rights and privileges to include the services provided by the Union in assisting members in obtaining employment with steamfitting industry employers in the geographic area of the Union's jurisdiction; and it is further

ORDERED that the motion of plaintiff Rutledge be, and it hereby is, denied.

SO ORDERED.

Dated: New York, New York
April 16, 1971

Marvin E. Frankel
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

-v-

LOCAL 638, ENTERPRISE ASSOCIATION
OF STEAM, HOT WATER, HYDRAULIC
SPRINKLER, PNEUMATIC TUBE, COMPRESSED
AIR, ICE MACHINE, AIR CONDITIONING
AND GENERAL PIPEFITTERS; THE JOINT
STEAMFITTERS APPRENTICESHIP COMMITTEE
OF THE STEAMFITTERS INDUSTRY; LOCAL 28,
SHEET METAL INTERNATIONAL ASSOCIATION;
SHEETMETAL WORKERS LOCAL 28 JOINT
APPRENTICESHIP COMMITTEE; LOCAL 580, IN-
TERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL IRON WORKERS;
THE JOINT APPRENTICE-JOURNEYMEN EDUCATIONAL
FUND, OF THE ARCHITECTURAL ORNAMENTAL IRON WORKERS
LOCAL 580; LOCAL 40, INTERNATIONAL ASSOCIATION
OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS;
THE JOINT APPRENTICESHIP COMMITTEE, IRON WORKERS
LOCAL 40 AND 361; MECHANICAL CONTRACTORS ASSOCIA-
TION OF NEW YORK, INC.; SHEETMETAL CONTRACTORS
ASSOCIATION OF NEW YORK CITY, INC.; ALLIED BLDG.
METAL INDUSTRIES.

Defendants.

71 CIV. 2877

COMPLAINT

71 Civ.

1. This action is brought by the Attorney General on behalf of the United States, seeking relief from violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq., and from interference with the implementation of Presidential Executive Order 11246 forbidding racial discrimination in employment opportunities by government contractors.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1345 and 42 U.S.C. §2000e-6(b).

3. Local 638 Enterprise Association of Steam, Hot Water, Hydraulic Sprinkler, Pneumatic Tube, Compressed Air,

Ice Machine, Air Conditioning and General Pipefitters

("Local 638") is a member of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, with principal offices at 841 Broadway, New York, New York. It is an unincorporated association of approximately 7,500 members, 4,000 of whom are in the A or Construction Branch (the "A Branch") and 3,500 of whom are in the B or Metal Trades Branch (the "B Branch"). A

Branch members earn significantly higher wages than B Branch members. Only 28 of the A Branch members are non-white while there are 500 non-whites in the B Branch.

4. Local 638 has a collective bargaining agreement with the Mechanical Contractors Association of New York, Inc. ("Mechanical Contractors"), an association of building contractors engaged in mechanical (such as plumbing and steamfitting) construction. Through this collective bargaining agreement, Local 638 exercises exclusive control over steamfitting work in the five boroughs of New York City and Nassau and Suffolk Counties. As a matter of practice, all individuals employed by members of the Mechanical Contractors as construction steamfitters must be Local 638 A Branch members or obtain approval to work from the A Branch of Local 638.

5. The Joint Steamfitters Apprenticeship Committee of the Steamfitters Industry ("Steamfitters JAC") is an unincorporated association with principal offices at 75 East 45th Street, New York, New York. It is composed of representatives of Local 638 and of the Mechanical Contractors. It

administers and controls the apprenticeship program for Local 638 and determines which persons shall be admitted to this apprenticeship program. At the present time, there are approximately 235 apprentices in the apprenticeship program of whom 15 are non-white.

6. Local 28, Sheetmetal International Association ("Local 28") is an unincorporated association with principal offices at 350 Broadway, New York, New York. It has approximately 3,500 members, only 44 of whom are non-white.

7. Local 28 has collective bargaining agreements with Sheetmetal Contractors Association of New York City, Inc., ("Sheetmetal Contractors"), an association of building contractors engaged in sheetmetal construction work, and with the Mechanical Contractors, which require all individuals employed by members of these associations as sheetmetal workers to become union members within 7 days of employment. Through these collective bargaining agreements, Local 28 exercises exclusive control over sheetmetal work in the five boroughs of New York City.

8. The Sheetmetal Workers Local 28 Joint Apprenticeship Committee (Local 28 JAC) is an unincorporated association composed of representatives of Local 28 and the Sheetmetal Contractors Association of New York City, Inc. The Local 28 JAC administers and controls the apprenticeship program for Local 28 and determines which persons shall be admitted to this apprenticeship program. At this time there are approximately 586 apprentices in the program, of whom 102 are nonwhite.

9. Local 580, Bridge, Structural and Ornamental Ironworkers (Local 580") is an unincorporated association

with principal offices at 265 West 14th Street, New York, New York. It has approximately 1,400 members, all but 2 of whom are white.

10. Local 580 has a collective bargaining agreement with Allied Building Metal Industries, ("Allied Metal") an association of contractors engaged in ironwork construction, and through this collective bargaining agreement exercises exclusive control over ornamental ironwork in the five boroughs of New York City, and Westchester, Nassau and Suffolk Counties. As a matter of practice, all individuals employed by members of Allied Metal as ornamental iron workers must be members of Local 580 or hold valid work permits issued by Local 580.

11. The Joint Apprentices-Journeyman Educational Fund of the Architectural Ornamental Ironworkers Local 580 of the International Bridge Structural and Ornamental Ironworkers ("Iron Workers JAC-580") is an unincorporated association with principal offices at 216 West 14th Street, New York, New York. It is comprised of representatives of Local 580 and Allied Metal. It administers and controls the apprenticeship program for Local 580 and determines which persons shall be admitted to the apprenticeship program. At the present time, there are 71 apprentices in the apprenticeship program, of whom 13 are non-white.

12. Local 40 of the International Association of Bridge, Structural and Ornamental Ironworkers ("Local 40") is an unincorporated association with principal offices at 673 Broadway, New York, New York. It has approximately 878 members, only 50 of whom are non-white.

13. Local 40 has a collective bargaining agreement with Allied Metal and through this collective bargaining agreement exercises exclusive control over structural iron work in Manhattan, Bronx, and Staten Island and in Westchester County. As a matter of practice, all individuals employed by members of Allied Metal as structural iron workers must be members of Local 40 or hold valid work permits issued by Local 40.

14. The Joint Apprenticeship Committee, Ironworkers Locals 40 and 361 ("JAC-40-361") is an unincorporated association with principal offices at Fourth Avenue, New York, New York. It is composed of representatives of Local 40, Allied Metal, and Local 361 of the International Association of Bridge, Structural and Ornamental Ironworkers, Brooklyn, New York. It administers and controls the apprenticeship program for Locals 40 and 361 and determines which persons shall be admitted to this apprenticeship program. At the present time, there are approximately 136 apprentices in the apprenticeship program, of whom 29 are non-white.

15. The defendant contractor associations, Mechanical Contractors, Sheetmetal Contractors and Allied Metal, each transact business in the Southern District of New York and are named as defendants in this action for purposes of relief only pursuant to Rule 19(a) (1) of the Federal Rules of Civil Procedure.

16. The union defendants are labor organizations within the meaning of 42 U.S.C. §2000e(d) and are engaged in an industry affecting commerce within the meaning of 42 U.S.C. §2000e(e).

17. The joint apprenticeship defendants are joint labor-management committees controlling apprenticeship training with the meaning of 42 U.S.C. §2000e-2(d).

18. The union defendants are engaged in a pattern and practice of resistance to the full enjoyment by non-whites of rights secured to them by 42 U.S.C. §2000e-2(c) and §2000e-2(d). This pattern or practice of resistance includes, but is not limited to, the following specific acts and practices:

- (a) Failing and refusing to admit nonwhite workmen into the defendant unions as journeymen members on the same basis as whites are admitted;
- (b) Failing and refusing to refer nonwhite workmen for employment within their respective jurisdictions on the same basis as whites are referred by applying standards for referral which have the purpose and effect of ensuring referral priority to their members and, in the case of Local 638, A Branch members, nearly all of whom are white, thereby perpetuating the effects of their past discrimination;
- (c) Failing and refusing to recruit blacks for membership in and employment through the defendant unions on the same basis as whites are recruited;
- (d) Failing and refusing to permit contractors with whom the defendant unions have collective bargaining agreements to fulfill the affirmative action obligations imposed upon those

contractors by Executive Order 11246 by

refusing to refer out blacks whom such contractors wish to employ;

(e) Failing and refusing to take reasonable steps to make known to non-white workmen the opportunities for employment in the trades under their jurisdictions, or otherwise to take affirmative action to overcome the effects of past racially discriminatory policies and practices.

The pattern or practice of resistance described in this Paragraph is of such a nature and is intended to deny the full enjoyment by non-whites of rights secured to them by 42 U.S.C. 2000e et seq.

19. The defendant Steamfitters JAC is engaged in a pattern and practice of resistance to the full enjoyment by non-whites of rights secured to them by 42 U.S.C.. §2000e-2(c) and §2000e-2(d). This pattern and practice of resistance has included and includes, but is not limited to, the following specific acts and practices:

(a) Failing and refusing to make information concerning apprenticeship opportunities available to non-whites on the same basis as it is made available to whites;

(b) Failing and refusing to make apprenticeship opportunities available to non-whites on the same basis as they are made available to whites by giving a preference in the selection of apprentices to friends and relatives of union members, nearly all of whom are white:

(c) Adopting standards for the selection or apprentices which are not job related and which operate to disqualify a disproportionate number of non-white applicants for apprenticeship.

The pattern or practice of resistance described in this Paragraph is of such a nature and is intended to deny the full enjoyment by non-whites of rights secured to them by 42 U.S.C. 2000e et seq.

20. The Sheetmetal Local 28 JAC, the Ironworkers Local 580 JAC, and the Ironworkers Local 40-361 JAC are named as defendants in this action pursuant to Rule 19(a) of the Federal Rules of Civil Procedure.

21. The aforementioned acts and practices have together operated as a substantial impediment to the employment of non-whites in the building trades in New York City and have hindered and prevented contractors from fulfilling affirmative action programs formulated pursuant to Executive Order 11246, and to Regulations promulgated thereunder.

22. The defendants have failed and refused to take reasonable steps to eliminate the effects of their past discriminatory policies and practices. Unless enjoined by order of this Court, the defendants will continue to engage in patterns and practices which have the effect of denying employment opportunities to non-whites on account of their race.

WHEREFORE, the plaintiff prays that all defendants, their officers, agents, members, employees, successors, and

all persons and organizations in active concert or participation with them be preliminarily and permanently enjoined from engaging in any racially discriminatory employment, membership, or referral practice, or in any employment, membership, or referral practice which operates to continue the effects of past racially discriminatory employment, membership or referral practices, and further that they be preliminarily and permanently enjoined from:

- (1) Failing or refusing to admit non-whites into journeyman membership on the same basis as whites are, or have been so admitted;
- (2) Failing and refusing to establish work referral systems which eliminate the effects of past discrimination by providing non-white applicants for referral with employment opportunities equal to those afforded white applicants;
- (3) Failing and refusing to recruit non-white candidates for membership and work referral on the same basis as whites have been recruited in the past;
- (4) Failing or refusing to adopt standards and procedures for apprenticeship qualification which make opportunities for apprentice training available to non-white applicants on the same basis as those opportunities are available to white applicants;
- (5) Failing and refusing to refer non-white

applicants for work on the same basis as white applicants are referred;

(6) Failing and refusing to take reasonable steps to overcome the present and continuing effects of their past discriminatory policies and practices, including at least the following affirmative steps:

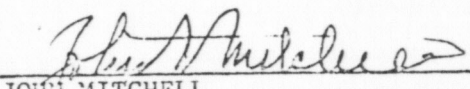
(a) implementation of a program designed to fully inform the minority community about the work and training opportunities available through the facilities of the defendant unions and joint apprenticeship committees;

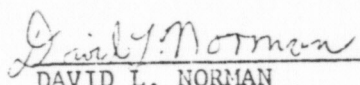
(b) implementation of training programs, in addition to those now conducted for apprentices, designed to fully train and fully qualify non-white workmen who are either too old to qualify as apprentices or who are already partially qualified in their trade;


(c) selection of sufficient apprentices from among qualified non-white applicants to overcome the effects of past discrimination.

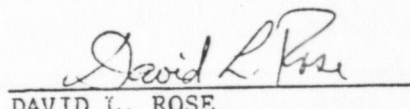
Plaintiff further prays for such other and additional relief as the cause of justice may require, together with its costs and disbursements in this action.

Respectfully submitted,


JOHN MITCHELL
Attorney General


DAVID L. NORMAN
Acting Assistant Attorney General


WHITNEY NORTH SEYMOUR, JR.
United States Attorney


DAVID L. ROSE
Attorney
Department of Justice
Washington, D. C. 20530

ANSWER OF DEFENDANT MCA TO COMPLAINT (71 Civ. 2877)
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

A-118

UNITED STATES OF AMERICA, :
Plaintiff, :

- against -

LOCAL 638, ENTERPRISE ASSOCIATION OF :
STEAM, HOT WATER, HYDRAULIC SPRINKLER, :
PNEUMATIC TUBE, COMPRESSED AIR, ICE :
MACHINE, AIR CONDITIONING AND GENERAL :
PIPEFITTERS THE JOINT STEAMFITTERS :
APPRENTICESHIP COMMITTEE OF THE :
STEAMFITTERS INDUSTRY ET AL. :
Defendants. :

ANSWER

71 Civ. 2877

-----X
Mechanical Contractors Association of New York,
Inc. and the employer members of defendant the Joint Steam-
fitting Apprenticeship Committee of the Steamfitters Industry,
by their attorneys Breed, Abbott & Morgan, answer the complaint
against them as follows:

1. Deny each and every allegation contained in Paragraphs 5, 10, and 22 of the complaint.
2. Deny knowledge or information sufficient to form a belief with respect to the allegations of Paragraph 7 of the complaint except deny that Mechanical Contractors has any Collective Bargaining Agreements with Local 28.
3. Deny the allegations contained in Paragraph 21 insofar as they incorporate the allegations in paragraph 19 of the complaint.

Wherefore defendants herein respectfully pray that judgment be entered dismissing the complaint as against them together with costs and disbursements.

BREED, ABBOTT & MORGAN

Dated: New York, New York
September , 1971

by Bl. Thomas A. Morgan Jr.
Attorneys for Mechanical
Contractors Association of
New York, Inc.

1 ecbr Hopkins-direct 58
2 J O S E P H L. H O P K I N S, called by the
3 government, having been first duly sworn, testified
4 as follows:

5 THE COURT: Please keep your voice up, Mr.
6 Hopkins.

7 THE WITNESS: You will hear me.

8 DIRECT EXAMINATION

9 BY RM. HARRIS:

10 Q Mr. Hopkins, were you subpoenaed to come here
11 today and testify?

12 A Yes, sir.

13 Q How are you employed, Mr. Hopkins?

14 A I am the secretary, a full-time employee for the
15 Mechanical Contractors Association of New York, Inc.

16 Q Are they a defendant in this lawsuit?

17 A Yes, sir.

18 Q Would you describe for the Court what the
19 Mechanical Contractors Association is?

20 A The Mechanical Contractors Association is a trade
21 association of the heating, ventilating and air conditioning
22 contractors in the metropolitan area and they are the prime
23 movers and the party to the labor agreement or trade agree-
24 ment with the Enterprise Association or Steamfitters Local
25 638 and have been since before the turn of the century.

59

Contractors Association?

A Approximately 60 plus or minus.

Q What kinds of work do they do?

A Heating, ventilating and air conditioning contractors in the building construction industry in New York City and other parts of the country.

Q Do they employ members of Local 638?

A In the jurisdiction of 638, vas.

Q Do you know approximately how many such members they employ at the present time?

A The major share of the labor force. It is hard, depending upon the jobs, but the major share of the labor force.

Q How long have you been secretary of the Mechanical Contractors Association?

A 1963.

Q How were you employed prior to that time?

A I am a retired Naval officer.

Q Will you describe for the Court your general duties as secretary of the Mechanical Contractors Association?

A Generally I actually act as the spokesman for the contractors many times unofficially for the industry as a whole. Basically I act as a spokesman in the

1 eobr

Hopkins-direct

60

2 negotiations of the trade agreement and I would say that
3 my prime purpose is to maintain the day-to-day labor
4 relations required to make that trade agreement and the
5 jobs go.

6 There are many other subordinate duties to that
7 and that follow that, but I think that is the prime job.

8 Q Up until, say, the past six months, was Local
9 638 generally the primary supply of labor for the members
10 of your association?

11 A It's the only source.

12 Q Is that a custom of the trade?

13 A That is by trade agreement; that is by a labor
14 agreement, yes, sir.

15 Q Historically and when I say that I mean in the
16 last ten years, as a matter of practice have all steamfitters
17 that have been employed by members of the Mechanical Con-
18 tractors Association been either members of the A branch
19 of Local 638 or persons who obtained approval from Local
20 638?

21 A All with the exception of the minorities that we
22 employed since '66.

23 THE COURT: Since? -- I didn't hear the last.

24 THE WITNESS: Since 1966, generally.

25 THE COURT: All right.

1 gabr

Hopkins-direct

65

2 A I wouldn't know the men he sent or whether they
3 were or not.

4 Q Now, in the course of your duties as secretary of
5 the Mechanical Contractors Association, have you attempted
6 to place minorities on jobs?

7 A I haven't attempted. I have successfully since
8 1964.

9 Q Aside from apprentices, could you describe your
10 efforts to place these men on the jobs, just in a general
11 manner?

12 A The economic pressures, and I will belittle the
13 social or moral requirements, but the economic pressures
14 since we are a business organization of our business require
15 a representation of black or Spanish surname on our jobs,
16 and we have responded to those pressures up and down since,
17 as I say, '64 at the apprenticeship level and '66 at the
18 journeyman level. The journeymen actually were recruited for
19 that purpose by me.

20 Q When you speak of "economic pressures," are you
21 including pressures by governmental organizations, contract
22 compliance officers, et cetera?

23 A Yes.

24 Q Could you describe just in general how you have
25 gone out to find some of these people that you have placed

1 gahr

Hopkins-direct

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2 THE COURT: All right.

3 BY MR. HARRIS:

4 Q Mr. Hopkins, turning your attention to this past
5 summer, in conjunction with the joint apprenticeship pro-
6 gram, did you arrange for the placement of 100 non-whites
7 on jobs?

8 A Counsel, there is within the industry a joint
9 apprenticeship committee. We did not do it through that
10 format. I did it through the Workers Defense League.

11 THE COURT: The joint apprenticeship program
12 is the title of the Workers Defense League. That is
13 what I was referring to.

14 A Yes, I did.

15 Q Would you describe generally for the Court how
16 this took place last summer?

17 A Well, basically we had again in late '70 through
18 '71 the economic pressures of doing business, and if we
19 wanted to stay in business, then we had to have a representa-
20 tive number of minorities on our job.

21 Having the experience from '64 and '66 to this
22 particular year and the numbers that were being required,
23 as we had to answer, I could no longer with my staff maintain
24 myself as an employment agency. So that I went basically
25 to Ernie Green, who heads up the Workers Defense League,

1 gabr Hopkins-direct 71
2 which is the recognized authority for professional recruit-
3 ing of minorities in the construction business, and discussed
4 this problem with Ernie and his staff, coming to him with
5 what we considered the minimum requirements of our industry
6 at that time.

7
8 He and his staff assured me they could recruit
9 100, which was our requirement at the time, and then I
10 sat in negotiations between the Workers Defense League
11 and my own employers to fulfil this mission.

12 I got cooperation on both sides, and I felt the
13 cooperation and coming from my business agents or 633's
14 business agents and officers. At the direction of my
15 employers I proceeded down the street. Ernie Green, as you
16 know, has recruiting agencies all over the metropolitan area.
17 I asked him also to bear down on Long Island because we
18 were moving into Brookhaven and Stony Brook and those
19 locations where government money was invested, and we
20 would like to have some minority personnel from that area
21 if it were possible.

22 Ernie Green and his staff went to work, and they
23 had some, I guess it would be, 225, 250 recruits, of whom
24 we had a demand for 100.

25 I then brought the members of the management
aside of the Joint Apprentice Committee to discuss this

1 JES-5 Hopkins-direct

2 document.

3 A These are the names of some of the minorities
4 that I employed between 1966 and up until the summer of
5 '71, I guess.

6 Q They were employed on A jobs?

7 A Yes, sir.

8 MR. HARRIS: I offer this in evidence.

9 MR. KAISER: I have no objection.

10 THE COURT: That will be received.

11 (Government's Exhibit 8 for identification was
12 received in evidence.)

13 THE COURT: I take it these include the 125 you
14 were talking about?

15 THE WITNESS: They do not. I think that list is
16 about 75, your Honor.

17 THE COURT: But all these people are part of
18 that 125?

19 THE WITNESS: Yes, sir.

20 MR. HARRIS: No further questions, your Honor.

21 THE COURT: All right.

22 MR. KAISER: I have no questions, your Honor.

23 THE COURT: All right.

24 (Witness excused)

25 MR. GLASSMAN: The Government calls William M.

1 gws Carlton-direct 109
2 A Yes, yes. We were originally given written
3 tests and then I was given a practical test.
4 Q By whom were you given these tests?
5 A By the Pittsburgh Pipefitting Testing Laboratory.
6 Q What results were achieved from that test?
7 A They gave me an excellent rating.
8 Q Mr. Carlton, are you presently a member of ?
9 Local 638?
10 A Yes.
11 Q Would you like to become a member of Local 638?
12 A I certainly would.
13 Q Would you like to become a member of the A branch?
14 A Yes.
15 Q Can you tell us what advantages you see in the
16 A branch membership?
17 A Well, the A branch, it gives more security, it
18 gives a fellow a chance to -- if he wants to go on a job,
19 to show that he is fully qualified for the job, to show
20 his A book and being in good standing.
21 Q Have you ever applied for membership in the A
22 branch?
23 A No.
24 Q Why have you not?
25 A Everybody that I talk to that I have worked with,

gws

Carlton-direct

1.3

2 none of them seem to be able to get into the A branch.
3 They have been in the steamfitting, some of them much
4 longer than I have.

5 MR. GLASSMAN: I have no further questions.

6 CROSS EXAMINATION

7 BY MR. KAISER:

8 Q Mr. Carlton, you said that some of the advantages
9 are security, and if you are a member of the A branch, you
10 would be considered a fully qualified steamfitter; is that
11 correct?

12 A Correct.

13 Q Are you familiar with the contract, the labor
14 contract of Local 638 and the Mechanical Contractors
15 Association?

16 A To what extent?

17 Q Are you familiar with the contract?

18 THE COURT: I don't know why you should be.

19 Do you know anything about the collective
20 bargaining agreement between the union and these employers?

21 THE WITNESS: No.

22 THE COURT: All right.

23 Q Do you know whether there is an employment
24 security clause in that contract?

25 MR. GLASSMAN: I object, your Honor.

XX

1 os3 Brisbane-direct

130

2 put my knowing into practice.

3 THE COURT: You say with a B book you don't think
4 you could be a lead man?

5 THE WITNESS: It's not possible, sir.

6 THE COURT: All right.

7 Q Mr. Brisbane, have you ever applied to the
8 union for a transfer to the A branch?

9 A Yes, sir; I did.

10 Q How did you go about that?

11 A I went to pay my union book one day at 814
12 Broadway and I went in to a gentleman by the name of Mr.
13 Mulligan, who is the secretary for the Steamfitters Local
14 638 in Brooklyn, and w said, "Would you inform me how could
15 I go about applying for a transfer with this book."

16 He says, "You have to write a letter to the
17 executive board and they will consider it and reply back
18 to you."

19 This I went home and I did momentarily.

20 Q I would like to show you Government's Exhibit 10
21 for identification and ask if you can identify that?

22 A Yes, sir; this is the letter.

23 Q Speak up.

24 A Yes, sir; this is the letter.

25 MR. HARRIS: I offer that in evidence.

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CS9

Brisbane-direct

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THE COURT: Show it to Mr. Kaiser.

MR. HARRIS: Surely.

MR. KAISER: I have no objection. I didn't
know it was marked for identification.

MR. HARRIS: It was just marked.

THE COURT: He beat the gun on you.

All right, it will be received.

(Government's Exhibit 10 was received in
evidence.)

Q Mr. Brisbane, did you receive any response to
that letter?

A I received a letter from Mr. Mulligan -- signed
by Mr. Mulligan. I couldn't remember it wasd a week,
three weeks, or two weeks after. I did receive a reply
from him stating that he did receive my letter and it was
in process.

Q Mr. Brisbane, I show you Government's Exhibit 11
for identification and ask if you can identify that
letter?

A Yes, sir; this is the letter.

Q This is the letter you received in response to
your letter?

A Yes.

MR. HARRIS: I offer it in evidence.

1 cs10 Brisbane-direct

2 MR. KAISER: I have no objection.

3 THE COURT: Received.

4 (Government's Exhibit 11 was received in
5 evidence.)

xx 6 MR. KAISER: What is the date of that?

7 THE CLERK: September 24th, 1971.

8 THE COURT: Is this '70 or '71?

9 THE CLERK: Both are '71, sir.

10 Q Have you received any additional response either
11 by letter or oral communication subsequent to Govern-
12 ment's Exhibit 11?

13 A Well, no, sir.

14 MR. HARRIS: No further questions.

15 CROSS EXAMINATION

xx 16 BY MR. KAISER:

17 Q Mr. Brisbane, you said before that the local
18 union in Lima, Ohio, was a branch of Local 638, is that
19 correct?

20 A It is a member of the United Trade, which is
21 affiliated with Local 638.

22 Q It is a member of the United Association which
23 is the International Union, is that correct?

24 A I don't know whether it is International or not,
25 sir. I know it is affiliated with it somehow.

1 gas-3 Mills-direct

2 Q Are you talking about the B branch?

3 A B branch.

4 Q How long have you been a member of the B branch?

5 A Three years and a couple of months.

6 Q Do you desire to transfer to the A branch of
7 Local 638?

8 A Sure I do, sir; for this reason: I meet a lot
9 of difficulties in my B book. I have been to many jobs and
10 they ask me what book I have. They said, "no good. You
11 are supposed to do heavy duty work as a welder, extra duty
12 work, high pressure work, weld trade book have no bearing.
13 You can't work here. This is for metal."

14 I'm a welder. I think I can do a good job. I
15 always go for these jobs.

16 Q Have you ever applied to Local 638 for transfer?

17 A Yes, I did.

18 Q Will you describe what you did?

19 A Well, I go the 638 office, the B branch. I never
20 got past the receptionist. She told me in order to get an
21 A book I have to write a letter. I did that. I never got
22 any reply.

23 Q Could you tell us what period of time you are
24 talking about?

25 A Well, I did it way back where I can't remember.

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1 Jas-4 Mills-direct

2 I think it was June I wrote a letter.

3 THE COURT: June of this year, sir?

4 THE WITNESS: June of this year. I have a
5 receipt to show. I got a receipt from the union that they
6 received the letter. I never got any reply.

7 Q You said you went down to the union office and
8 saw the receptionist.

9 Was that one time or more than one time?

10 A Many times.

11 Q Can you estimate how many times?

12 A After being laid off in Jersey, my next bet was
13 to come to New York City, to come back to my union.

14 I was told they can help me. I keep going back,
15 and they keep telling me they will take my name and number,
16 and they will call me in the event anything turns up.

17 Things are very slow. I keep waiting until I
18 met Mr. Lichtensteiger. I did get a job through the union.

19 Q Did they ever call you?

20 A No.

21 MR. HARRIS: No further questions.

22 CROSS EXAMINATION

23 BY MR. KAISER:

24 Q Mr. Mills, when you returned from New Jersey,
25 did you go back to Tubeco for employment?

1 mpz-l. Kimmel-direct 152

2 steamfitting jobs that your company has undertaken?

3 A No.

4 Q Have there been sufficient numbers of members
5 of the A branch of Local 638 to perform all the welding
6 jobs that your company has undertaken?

7 A No.

8 THE COURT: Do I understand, Mr. Kimmel, that
9 it has been your experience that you don't get enough steam-
10 fitters and enough welders to do these jobs in the time you
11 would like to do them?

12 THE WITNESS: Yes.

13 THE COURT: And how long has that been going on,
14 sir?

15 THE WITNESS: It's been in varying degrees since
16 the post-war.

17 THE COURT: Since the post-war time?

18 THE WITNESS: Yes. Various -- there are times
19 when there are more than enough steamfitters. There are
20 times when there aren't enough.

21 THE COURT: And can you tell me about any recent
22 experiences you have had along that line?

23 THE WITNESS: Well, this last year we have had
24 many non-members of the Local 638 employed.

25 THE COURT: You have employed non-members?

1 gag 13

Alvord-direct

171

2 Q Could you describe for us the nature of the work
3 performed by your construction steamfitters?

4 A Well, they fabricate, handle and install pipe and
5 pumps and equipment. That's the normal steamfitting work.

6 Q Do some of these construction steamfitters also
7 perform welding?

8 A Yes.

9 Q Are all of the construction steamfitters who work
10 for you certified welders?

11 A No.

12 Q Mr. Alvord, in the past could you describe for us
13 how your company has recruited construction steamfitters?

14 A Well, we have a superintendent who handles all of
15 the men. That is part of his job, to man the job. I know
16 in a general way that he knows people in the business,
17 steamfitters. He has foremen who he works with. When you
18 get a new job, they get the men.

19 Q How many foremen do you presently have employed?

20 A Well, there's one foreman on every job. Some of
21 them have deputy foremen.

22 Q Are these all members of the A branch of Local
23 638?

24 A Yes. To my knowledge they are, I believe.

25 Q Mr. Alvord, have there been a sufficient number of

1 gag 14 Alvord-direct

172

2 A man to perform all jobs?

3 A No.

4 Q Have there been a sufficient number of A men to
5 perform all welding required?

6 A No.

7 Q Has your company expended substantial funds for
8 overtime as a result?

9 A Yes.

10 Q Mr. Alvord, do you know about the group of 100
11 people, minority people, hired this summer?

12 A Yes.

13 Q Are any employed by your company?

14 A Yes.

15 Q Are they presently performing construction work?

16 A Yes.

17 Q Are there any members of the B branch of Local
18 638 presently performing construction work for your company?

19 A Yes.

20 Q Mr. Alvord, what is your experience with all of
21 these minority workers?

22 A In general the experience has been satisfactory.
23 The reports I get, they are competent in the work they are
24 doing. I wouldn't say 100 per cent, but the general experi-
25 ence has been satisfactory.

1 gag 11 Humada-direct /cross 271

2 A Somebody suggest to me I had to write some letters
3 to somebody, a member of Local 633 Branch A, to Mr. Murray.
4 So before I do that I go to the-- to our delegate on the
5 B branch, which the name is Mr. Enright, and he suggested
6 to go and see Mr. Murray or some other members of the
7 local, and then he suggest to us what we have to do.

8 I try several times. I never find any of those
9 gentlemen.

10 One time he is not there, another time he is busy.

11 Q Was this at the union hall?

12 A The Local 633, Branch A, so I take-- I write a
13 letter. I write three letters to Mr. Murray. The dates
14 are May 8th, June 2nd, the second one, and July 9th, the
15 third one. I never receive any answer to these letters.

16 Q That is to date?

17 A Yes.

18 MR. HARRIS: I have no further questions.

19 THE COURT: I take it, Mr. Humada, these letters
20 were all addressed to Mr. Murray?

21 THE WITNESS: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. KAISER:

24 Q Mr. Humada, you testified you came to the United
25 States in 1960, is that correct?

1 gag 6 Ramos - direct

2 THE WITNESS: The same work.

3 Q Mr. Ramos, are you a member of Local 638?

4 A B. branch.

5 Q When did you join the B branch?

6 A 1964.

7 Q Do you wish to join the A branch?

8 A Oh, yes, I wish.

9 Q Why is that?

10 A Because you have more security, you know, more
11 benefits.

12 Q Do you--

13 A More security for my family.

14 Q Have you ever applied for membership in the
15 A branch?

16 A Yes, I have two letters here.

17 Q Would you describe what those letters are?

18 A Yes. I sent to Mr. James Mulligan July 1st, 1971.

19 Q This is a copy of a letter that you sent to Mr.
20 Mulligan?

21 A Yes.

22 MR. HARRIS: I would like to offer that in evi-
23 dence.

24 THE COURT: Then you wrote a second letter?

25 THE WITNESS: Yes.

1 gag 7 Ramos-direct

2 THE COURT: What was the date of that letter?

3 THE WITNESS: August 9th.

4 THE COURT: August the 9th?

5 THE WITNESS: Yes.

6 THE COURT: Who was that addressed to? Who is
7 it written to? Who did you write to?

8 THE WITNESS: I don't understand.

9 James Mulligan.

10 THE COURT: Again to James Mulligan?

11 THE WITNESS: Yes.

12 THE COURT: Thank you.

13 MR. HARRIS: I am going to offer this, too.

14 THE WITNESS: I put the second one--

15 THE COURT: Just answer the questions.

16 (Pause.)

17 The witness told me that he sent the second
18 letter registered because he said he didn't get any
19 answer to the first one.

20 THE WITNESS: Yes.

21 Q Did they answer the second one?

22 A No. No answer me yet.

23 MR. HARRIS: I would like to offer the two let-
24 ters in evidence.

25 MR. KAISER: May I have a voir dire on this, your

1 Jy 2

Gruter-cross

357

2 A There was three -- four apprentices and two B men.

3 Q Has there ever been a shortage of A men on jobs of
4 which you have been a foreman?

5 A Yes, we had a shortage.

6 Q Had your employer ever requested you to obtain
7 additional men?

8 A They would come through the B local.

9 Q Has the employer ever asked you to obtain such men,
10 additional men?

11 A No.

12 Q How do you generally determine the qualifications
13 of steamfitters?

14 A By the work they do.

15 Q Would you describe what kind of work they do and
16 how --

17 A I mean, like Alexander and Adams were sent as weld-
18 ers, and when I got done with my welding I let them go.

19 Q Are there any qualifications of steamfitters?

20 A They have to know the trade, as far as fitting and
21 stuff is concerned.

22 THE COURT: Could you explain that a little bit,
23 Mr. Gruter? What do you mean by that? Their expertise, I
24 suppose, in the work?

25 THE WITNESS: To know their measurements on fittings

1 jg 25

McGuire-cross

464

2 A No, I haven't.

3 THE COURT: I don't know what the "otherwise" is.

4 Your job is in connection with members of the union,
5 isn't it?

6 THE WITNESS: Right.

7 THE COURT: If it was a non-union man, who didn't
8 belong to either the A or the B branch, would you take up the
9 cudgels for him?

10 THE WITNESS: I absolutely would. If he is
11 working under our jurisdiction, absolutely.

12 Q All I want to know is if that ever happened.

13 A No, it hasn't happened.

14 Q On the jobs within your jurisdiction, have there
15 ever been shortages of men? I'm talking about in the last
16 few years when you have been a business agent.

17 A Have there ever been shortages of men?

18 Q Yes.

19 A I'd say occasionally they call for it. Yes, I
20 believe I testified to that.

21 Q That's what you were referring to on the several
22 occasions when the employers called you?

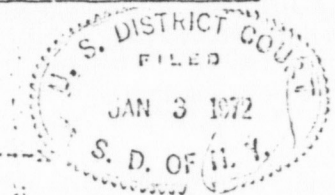
23 A Right.

24 Q Did a foreman ever ask you to get any men?

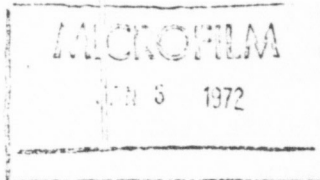
25 A Never. Excuse me. I wouldn't say never. Maybe

SD:14
70-1674

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,



Plaintiff,

ORDER

-against-

71 Civ. 2877

LOCAL 638, et al.,

Defendants.

-----X

Plaintiff, the United States of America, having moved by Order To Show Cause dated November 9, 1971 for the issuance of a preliminary injunction enjoining defendant Local 638, Enterprise Association, etc. ("Local 638") from denying to qualified minority workmen union membership on terms and conditions, and with rights, privileges and responsibilities equal to all other workmen enjoying journeyman status in the Building and Construction Trades Branch of Local 638, without regard to race or national origin, and the Court having heard testimony at hearings commencing on November 26, 1971, and having read and filed the affidavits and exhibits submitted in support of said motion and in opposition thereto; and after due deliberation and after rendering and filing Findings of Fact and Conclusions of Law, it is hereby

ORDERED, that the 169 minority workers whose names are set forth on the annexed Exhibit A, which is made a part of this Order, are hereby granted full journeyman status

ORDER OF BONSAI, J., GRANTING 169 MINORITY WORKERS FULL
JOURNEYMAN STATUS

A-143

SJC:K
70-1674

in the Building and Construction Trades Branch, ("A Branch") of Local 638, with rights, privileges and responsibilities equal to those of all other members enjoying full journeyman status, these rights and privileges to include the services provided by Local 638 in assisting members of the A Branch in obtaining and retaining employment with steamfitting industry employers in New York City and Long Island; and it is further

ORDERED, that Local 638 shall, within one week of the date of this Order, inform each of the minority workers whose name is set forth on the annexed Exhibit A, in writing, of his A Branch status as hereinabove set forth and of the provisions for payment of the initiation or transfer fee and dues, and of the amounts and dates such payments are due, as hereinafter set forth; and it is further

ORDERED, that the initiation or transfer fees payable by the said minority workers shall be those charged other members of the A Branch similarly situated and presently in force, and shall be payable at the union office, 841 Broadway, New York City, in equal weekly installments over a period of 10 weeks commencing two weeks from the date of this Order, for which receipts will be given by Local 638; and it is further

ORDERED, that, as of the date of this Order, said minority workers shall be liable to pay the union dues charged to other members of the A Branch similarly situated and presently in force, on the same basis as union dues paid by

ORDER OF BONSAI, J., GRANTING 169 MINORITY WORKERS FULL
JOURNEYMAN STATUS

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SSC:K
70-1674

other members of the A Branch, such payment to commence two weeks from the date of this Order, for which receipts will be given by Local 638 until the formal issuance of the appropriate A-Branch Union Book; and it is further

ORDERED, that within 45 days of the date of this Order, or immediately upon payment in full of the aforesaid initiation or transfer fee, whichever shall later occur, Local 638 shall issue or cause to be issued formal membership documentation, including the appropriate A-Branch Union Book, to each of the said minority workers as is issued to all other journeymen members of said A Branch; and it is further

ORDERED, that within 30 days of the date of this Order, Local 638 shall have the right, if it deems any of said minority workers to be incompetent, to apply to this Court for an Order striking the name of such allegedly incompetent minority workers from Exhibit A annexed to this Order, such application being independent of but not in lieu of the preceding paragraphs of this Order; and it is further

ORDERED, that within 60 days of the date of this Order, Local 638 shall submit to the Court proposed objective qualifications and procedures, including a description of any practical and written examination(s), for admission of workers, regardless of race or national origin, to full journeyman status in the A Branch which procedures shall take effect upon approval by the Court, and shall be applied to all applicants to the A Branch during the pendency of this action; and it

ORDER OF BONSAI, J., GRANTING 169 MINORITY WORKERS FULL
JOURNEYMAN STATUS

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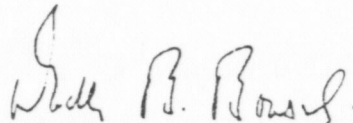
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70-1674

is further

ORDERED, that the Court retains jurisdiction for
the purpose of effectuating this decree.

Dated: New York, New York

January J , 1972



U. S. D. J.

ORDER OF BONSAI, J., GRANTING 169 MINORITY WORKERS FULL
JOURNEYMAN STATUS

A-146

• ACEVEDO, Humberto A.
405 East 125th Street
Apt 10
New York, NY 10002
533-3542

• CAMBRIDGE, Radcliffe
690 Willoughby Ave.
Brooklyn, NY
SS # 580-10-3961

• AIRD, Vincent Leroy
2164 Prospect Ave.
Apt. 1K
Bronx, NY
298-0069
SS # 580-10-2401

• CAMELLO, Michael
107 Lincoln Place
Brooklyn, NY
SS # 580-10-4588

• BAUTISTA, Alejandro A.
1127 Sheridan Avenue
Apt 1C
Bronx, NY 10456
538-4989
SS # 037-36-1077

• CIRIACO, Guillermo
110 Bergen St.
Brooklyn, NY
858-7381

• BRISBANE, Ted
1453 Park Place
Brooklyn, NY 11213
773-3783
SS # 086-44-9525

• CORLETT, Lawford
1353 New York Avenue
Brooklyn, NY
SS # 099-44-2591

• BROWN, David
749 Nostrand Avenue
Brooklyn, NY 11235
SS # 237-52-0775

• DEBELLOTTE, Rupert
179 Linden Blvd.
Brooklyn, NY
SS # 580-10-1413

• BURKE, Harold L.
1414 Brooklyn Avenue
Brooklyn, NY 11210
SS # 054-46-5493

• DEBOULET, Frank N.
371 Harlsey St.
Brooklyn, NY 11232
SS # 056-48-3755

• BUTLER, William
361 Livonia Ave.
Brooklyn, NY

• DUPONT, Francois
1177 Anderson Avenue
Bronx, NY
SS # 109-32-5519

• CALDERIN, Jacobo
870 Jennings St.
Bronx, NY
SS # 120-22-2062

• ESPINEIRA, Mariano
89-03 145th St.
Jamaica, NY
657-1679
SS # 085-32-3032

ORDER OF BONSAI, J., GRANTING 169 MINORITY WORKERS FULL
JOURNEYMAN STATUS

A-147

FERNANDEZ, Oswaldo
544 West 157th St.
New York, NY
363-9097
SS # 074-36-7150

JACOBS, Mike
156 St. Marks Avenue
Brooklyn, NY
SS # 107-46-9366

FINN, Keith
360 East 169th Street
Bronx, NY
SS # 109-46-3549

JAMES, H.
1407 Sheridan Avenue
Bronx, NY
SS # 051-44-9131

FORBES, Eric
1416 Sterling Place
Brooklyn, NY
493-8013
SS # 262-92-9818

LAMONI, Louis
824 East 161 Street
Bronx, NY
329-4962
SS # 122-34-9837

GAGO, Luis
37-16 84th St.
Jackson Heights, NY 11372
SS # 078-28-8530

LEE, Raymond
333 East 93rd Street
New York, NY
SS # 576-42-3762

GOMEZ, Santos
1919 21st Drive
Astoria, NY
278-9337
SS # 105-42-3354

LEWIS, Franklin
1588 Sterling Place
Brooklyn, NY 11213
772-2651
SS # 124-46-4175

HOLDER, Charles
1347 Eastern Parkway
Brooklyn, NY
SS # 580-10-2599

LEWIS, T.
664 St. Marks Ave.
Brooklyn, NY
SS # 580-07-6120

HOLQUIN, Humberto
76-17 Woodside Avenue
Elmhurst, NY 11373
991-2226
SS # 123-33-9115

LEWIS, Eric
1556 Minford Place
New York, NY
SS # 050-23-0546

HUMADA, Alberto
109-26 114th St.
Richmond Hill, NY
641-2555
SS # 071-32-7139

LLEWELLYN, Roy
1183 Dean St.
Brooklyn, NY
735-6879
SS # 090-48-1754

JACKSON, E.
1523 Taylor Avenue
Bronx, NY
SS # 114-30-5884

LUCAS, E.
1585 Odell St.
Bronx, NY
SS # 091-30-7164

ORDER OF BONSAI, J., GRANTING 169 MINORITY WORKERS FULL
JOURNEYMAN STATUS

A-148

FERNANDEZ, Oswaldo
544 West 157th St.
New York, NY
363-9097
SS # 074-36-7150

JACOBS, Mike
156 St. Marks Avenue
Brooklyn, NY
SS # 107-46-9866

FINN, Keith
360 East 169th Street
Bronx, NY
SS # 109-46-3549

JAMES, H.
1407 Sheridan Avenue
Bronx, NY
SS # 051-44-9131

FORBES, Eric
1416 Sterling Place
Brooklyn, NY
493-8013
SS # 262-92-9818

LAYONI, Louis
824 East 161 Street
Bronx, NY
329-4962
SS # 122-34-9837

GAGO, Luis
37-16 84th St.
Jackson Heights, NY 11372
SS # 078-28-8530

LEE, Raymond
333 East 93rd Street
New York, NY
SS # 576-42-3762

GOMEZ, Santos
1919 21st Drive
Astoria, NY
278-9337
SS # 105-42-3354

LEWIS, Franklin
1588 Sterling Place
Brooklyn, NY 11213
772-2651
SS # 124-46-4175

HOLDER, Charles
1347 Eastern Parkway
Brooklyn, NY
SS # 580-10-2599

LEWIS, T.
667 St. Marks Ave.
Brooklyn, NY
SS # 580-07-6120

HOLGUIN, Humberto
76-17 Woodside Avenue
Elmhurst, NY 11373
991-2226
SS # 123-38-9115

LEWIS, Eric
1556 Minford Place
New York, NY
SS # 050-23-0546

HUMADA, Alberto
109-26 114th St.
Richmond Hill, NY
641-2555
SS # 071-32-7139

LITWELLYN, Roy
1183 Dean St.
Brooklyn, NY
731-6879
SS # 090-48-1754

JACKSON, E.
1523 Taylor Avenue
Bronx, NY
SS # 114-30-5884

LUCAS, E.
1583 Odell St.
Bronx, NY
SS # 091-30-7164

ORDER OF BONSAI, J., GRANTING 169 MINORITY WORKERS FULL
JOURNEYMAN STATUS

A-149

1 LUGO, Juan A.
1873 Loring Place
Bronx, NY 10453
294-5154
SS # 076-34-5870

2 MORGAN, Hubert A.
62 DeSales Place
Brooklyn, NY 11207
443-6457
SS # 124-36-0777

3 MACIERA, Antonio
18-49 21st Street
Astoria, NY
723-2702
SS # 071-36-5333

4 NESBITT, Leslie
321 Carlton Avenue
Brooklyn, NY
625-7563
SS # 580-00-6626

5 MAESTRY, V.
59 13th St.
Hoboken, New Jersey
SS # 146-46-6302

6 NUNEZ, Domingo
378 Rochester Avenue
Brooklyn, NY
SS # 582-20-7321

7 MARTIN, Herman
631 Decatur Street
Brooklyn, NY
SS # 580-10-1172

8 ORDONEZ, Pedro
485 Mercer St.
Jersey City, NJ
SS # 063-02-1045

9 MARTINEZ, Francisco
340 West 19th Street
New York, NY 10011
929-8858
SS # 090-32-2051

10 OITLEY, Arthur
185 Eldert Street
Brooklyn, NY

11 MARLOW, Ferdinand J.
20 East 179th Street
Bronx, NY
583-5914
SS # 112-46-8636

PEREZ, Isidro
105 West 105th Street
New York, NY

MC FARLAND, Eugene
3758 10th Avenue
New York, NY 10034
SS # 117-34-7568

12 PEREZ, Louis
2102 Homer Avenue
Bronx, NY
SS # 068-30-2992

13 MILLER, Cedric
3505 Foster Avenue
Brooklyn, NY
SS # 098-46-5862

14 ORCIAS, Ransford
2045 Union Street
Brooklyn, NY
SS # 101-36-9607

15 MILLS, Crowell
3104 Newkirk Avenue
Brooklyn, NY
693-6155
SS # 086-44-7662

16 RAMOS, Ramon
477 Milford St.
Brooklyn, NY
SS # 062-48-7560

17 RANSOME, Fitzroy
127 St. Marks Ave.
Brooklyn, NY
SS # 062-48-7560

ORDER OF BONSAI, J., GRANTING 169 MINORITY WORKERS FULL
JOURNEYMAN STATUS

A-150

REEVES, Daniel
324 Quincy St.
Brooklyn, NY
SS # 257-14-7624

ST. CYR, Vernon
1770 Grand Concourse
Bronx, NY
587-2489
SS # 055-48-2919

RIANO, Jose
8919 Sutphin Blvd.
Jamaica, NY
297-1399
SS # 122-40-5526

ST. HILAIRE, Asbert
2503 Foster Avenue
Brooklyn, NY
SS # 580-09-8441

SANTIAGO, Alvisu
290 Frost St.
Brooklyn, NY 11222
389-7992
SS # 582-56-0941

TOUSSAINT, Julio
211 Trenton Place
Staten Island, NY
SS # 129-34-1068

SANTIAGO, Jose R.
963 East 165th Street
Bronx, NY 10459
581-07-8208

TYSON, Leroy
1414 New York Avenue
Brooklyn, NY
434-3606
SS # 580-09-4370

SCOTT, Leon
507 West 149th Street
New York, NY
286-6791
SS # 129-36-1018

VINRACHOFF, George
175-29 90th Avenue
Jamaica, NY
SS # 066-34-1536

SEWELL, L.
193A Classon Avenue
Brooklyn, NY
SS # 266-19-7966

VILLAMON, E.
35-28 99th Street
Corona, NY
SS # 583-01-6294

SMALL, L.
282 East 95th Street
Brooklyn, NY
SS # 086-44-8910

VILLON, John
767 Miller Avenue
Brooklyn, NY
SS # 129-36-1018

SMITH, H.
198 Madison Street
Brooklyn, NY
068-48-0453

VILLON, George
4329 Forley Street
Elmhurst, NY 11373

SOTILLIO, Edward
202 Elder Street
Brooklyn, NY
SS # 580-10-4433

VIVAS, Lois
2102 Homer Avenue
Bronx, NY
SS # 582-14-1360

*in New York
List*

ORDER OF BONSAI, J., GRANTING 169 MINORITY WORKERS FULL A-151
JOURNEYMAN STATUS

WAHLERS, F.
4610 A 189th Street
Flushing, NY
SS # 127-09-1979

Ø WEBB, J.
778 Prospect Place
Brooklyn, NY
SS # 063-46-0971

Ø WINFIELD, Willie
54 Baiting Place Road
Farmingdale, NY
SS # 112-34-8626

Ø ZAPATA, Octavio
532 Lefferts Avenue
Brooklyn, NY
SS # 115-36-7730

ORDER OF BONSAI, J., GRANTING 169 MINORITY WORKERS FULL JOURNEYMAN STATUS 1A-152

ADAMS, STANLEY A. 326 Washington Avenue Brooklyn, NY 11230	BOWIE, Astley 1433 Lincoln Place Brooklyn, NY 11213
ADAMS, Herbert 4411 Church Avenue Brooklyn, NY 11226	BRATHWAITE, WINSTON 221 Linden Blvd. Brooklyn, NY
ADAMS, Vincent 4411 Church Avenue Brooklyn, NY 11226	BROWN, Augustus 444 Blake Avenue Apt 1D Brooklyn, NY
ALEXANDER, Elias 718 St. Marks Avenue Brooklyn, NY 11216	BROWN, Roy 78 Hawthorne Street Brooklyn, NY 11225
ALLAN, Carlton 258 Schnectady Avenue Brooklyn, NY	CAMPBELL, Eric 3505 Foster Avenue # 6F Brooklyn, NY 11210
ANDERSON, JACKIE 133-31 149th Street South Ozone Park, NY	CARLTON, MATTHEW 142 Woodworth Avenue Yonkers, NY 10702
ASHMEAD, GLADSTON H. 11 East 32nd Street New York, NY 10016	CELESTIN, Horace 605 McDonough Street Brooklyn, NY
BABOOLAL, Soobloo 214 West 20th Street #3 New York, NY	CHARLES, Andrew 748 Rutland Road Brooklyn, NY 11203
BAILEY, Winston 422 Blake Avenue Brooklyn, NY 11212	CLARK, H. A. 354 Lexington Avenue Brooklyn, NY 11216
BATES, Gerald 615 Decatur Street Brooklyn, NY 11233	CORDNER, SIMEON 856 Hancock Street Brooklyn, NY 11233
BERNARD, JOSEPH 44 Macon Street #4 Brooklyn, NY 11213	DAVIS, RONALD 380 Rockaway Parkway Brooklyn, NY
BLAIR, RONALD 40 Park Place Brooklyn, NY 11217	DEMPSTER, CECIL 43 McDonough Street Brooklyn, NY 11216
BLAIR, WILLIAM M. 1049 Bergen Street Brooklyn, NY 11216	DUINHEK, DENNIS M. 587 East 169th Street Bronx, NY 10456
BOWEN, Beresford 1122 Madison Street Brooklyn, NY 11221	EDMUND, Theophilus 1099 Walton Avenue Bronx, NY 10452

ORDER OF BONSAI, J., GRANTING 169 MINORITY WORKERS FULL
JOURNEYMAN STATUS

A-153

EDWARDS, RICHARD
2162 Strauss Street #2
Brooklyn, NY 11212

FAGAN, Webster
586 Maple Street
Brooklyn, NY

FEURTADO, LORENZO
52 St. Nicholas Place #53
New York, NY

FOSTER, WINSTON
1711 Davidson Avenue
Bronx, NY 10453

FRANCIS, LESLIE
511 Clinton Avenue
Brooklyn, NY 11238

FRENCH, HERBERT A.
1254 Union Street
Brooklyn, NY 11225

GARRICK, RONALD
41 Delisle Avenue
Roosevelt, NY

GILCHRIST, BYRON
590 Empire Blvd.
Brooklyn, NY 11225

GILL, ULRIC FITZROY
541 Warwick Street
Brooklyn, NY

CONZALEZ, LAWRENCE
1305 President Street
Brooklyn, NY 11213

GORDON, SIGISMUND
1175 Linden Blvd.
Brooklyn, NY 11212

HACKETT, TREVOR
1113 Sheridan Avenue
Bronx, NY

HAZZARD, JERRY
63 West 7th Street
Mt. Vernon, NY 10550

HEDLEY, ARCHIBALD
3814 Laconia Avenue
Bronx, NY

HOLLINGSWORTH, AUGUSTUS M.
89 Macon Street
Brooklyn, NY 11226

HUDSON, ANDREW
360 Gates Avenue
Brooklyn, NY 11216

HUSBANDS, CARLISLE
1362 New York Avenue
Brooklyn, NY 11216

JACKSON, AARON
133-31 149th Street
South Ozone Park, NY 11436

JAMES, REYNOLD
1430 Park Place #22
Brooklyn, NY

KING, STEVE J.
44 Halsey Street
Brooklyn, NY

KNIGHT, GREGORY
4020 Laconia Avenue
Bronx, NY

LACY, RAYMOND
140 East 33th Street
Brooklyn, NY 11203

LAYNE, GEORGE
12 Arlington Place
Brooklyn, NY 11216

LEIGHFORD, ALEXANDER
735 Putnam Avenue
Brooklyn, NY 11221

LEITO, NORAMEN J.
201 Clinton Avenue
Brooklyn, NY 11205

LEWIS, CARLOS
1122 Madison Street
Brooklyn, NY 11221

LEZAMA, EARL
138 Prospect Place
Brooklyn, NY 11217

LOFFREDO, Darwin
197-14 Carpenter Avenue
Hollis, NY 11423

ORDER OF BONSAI, J., GRANTING 169 MINORITY WORKERS FULL
JOURNEYMAN STATUS

A-154

• HALCOCK, SHIRLEY 370 Miller Avenue Brooklyn, NY	• PITT, DELETH 57 East 32nd Street Brooklyn, NY 11226
• HARLOW, FERDINAND 1392 Franklin Avenue Bronx, NY 10456	• RAMSEY, BERNESFORD 11 East 32nd Street New York, NY
• MATTHEW, MICHAEL 130 Rising Street Brooklyn, NY 11216	• REYNOLDS, FREDERICK 731 St. Nicholas Avenue New York, NY
• MC CALLIST, Conrie 370 Miller Avenue Brooklyn, NY 11207	• ROBERTS, JOE 113 West 126th Street New York, NY 10027
• MC CORNACK, HURVIN 38 Cooper Street Brooklyn, NY 11207	• ROBINSON, WINSTON 360 New York Avenue New York, NY Apt 3C
• MITCHELL, ERROL 1410 New York Avenue Brooklyn, NY 11210	• SANTIAGO, VEGA ANSELMO 6 West 107th Street New York, NY
• MITCHELL, HURBERT 1002 Rutland Road Brooklyn, NY 11212	• SCOTT, GEORGE C. 1368 New York Avenue #2D Brooklyn, NY 11203
• MOHAMMED, ALDWIN 150 Schenck Avenue Brooklyn, NY 11207	• SCOTT, VINCENT 1420 Carroll Street Brooklyn, NY
• MORALES, ANGEL COLON 550 East 134th Street Apt 5A Bronx, NY 10454	• SEETAL, JAMES 1414 New York Avenue #1F Brooklyn, NY 11210
• MORGAN, LINCOLN 306 Prospect Place Brooklyn, NY 11238	• SEWELL, STANFORD 87 West 169th Street Bronx, NY
• NEWMAN, NORMAN 921 Montgomery Street Brooklyn, NY 11213	• SHELTON, GLADSTONE 9325 Kings Highway Brooklyn, NY 11212
• PARKS, WALTER 1437 Pacific Street Brooklyn, NY 11216	• SPINCE, CHARLES 538 Willoughby Avenue Brooklyn, NY 11206
• PEMBERTON, ALFORD 643 Carlton Avenue Brooklyn, NY 11238	• ST. HILL, EDWARD 950 Rutland Road Brooklyn, NY 11212
• PEREZ, ISIDRO 105 West 103th Street New York, NY 10025	• THATCHER, CARLOS 436 Eastern Parkway Brooklyn, NY 11225

(NOSE 0242)

(VINCENT, 0242)

(VINCENT, 0242)

ORDER OF BONSAI, J., GRANTING 169 MINORITY WORKERS FULL A-155-A-156
JOURNEYMAN STATUS

THOMAS, WINSTON
173 St. Mark Avenue
Brooklyn, NY

WILLIAMS, DAVID
36 South Oxford Street
Brooklyn, NY

THOMPSON, RUDOLPH
114 East 95th Street
Brooklyn, NY 11212

VASSELL, KENNETH
1320 Lincoln Place
Brooklyn, NY 11213

WEST, ADOLPHUS
1088 Anderson Avenue
Bronx, NY 10452

VILLAFANA, CLAUDE
239 Putnam Avenue
Brooklyn, NY

WILKINSON, WOODBINE
32 Mt. Joy Place
New Rochelle, NY 10801

WILLIAMS, ALVA
370 Miller Avenue
Brooklyn, NY

YOUNG, CLINTON
1399 Clinton Avenue
Bronx, NY 10456

HOULDER, Carlisle
1421 Webster Avenue
Bronx, New York 10454
SS # 094-46-3769

JEN:rms
70-1674

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A-157

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

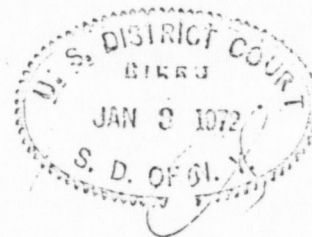
----- x
UNITED STATES OF AMERICA, :

Plaintiff, :

- v - :

LOCAL 638, et al., :

Defendants. :



----- x
SHEET METAL WORKERS INTERNATIONAL :
ASSOCIATION, LOCAL UNION NO. 28, :

Third-Party Plaintiff, :

- v - :

NEW YORK STATE DIVISION OF HUMAN :
RIGHTS, :

Third-Party Defendant. :

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

71 Civ. 2877

----- x
SHEET METAL WORKERS (LOCAL UNION :
NO. 28) JOINT APPRENTICESHIP :
COMMITTEE AND TRUST, :

Fourth-Party Plaintiff, :

- v - :

NEW YORK STATE DIVISION OF HUMAN :
RIGHTS, :

Fourth-Party Defendant. :
----- x

MICROFILM

JAN 3 1972

FINDINGS OF FACT

I. Background

1. Local 638 is a labor union whose territorial jurisdiction consists of the 5 boroughs of the City of New York and Nassau and Suffolk counties (Tr. 16; Gov't

2. Local 638 is a member of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry (Tr. 23).

3. Local 638 has two branches - a construction or A branch whose members do mainly construction work and a metal trades or B branch whose members work in shops and do repair work (Tr. 15-16; Gov't Ex. 1-pp4-5).

4. At the present time, there are approximately 3850 journeymen members of the A branch, of whom 31 are non-white (Tr. 16), and 2800-3000 members of the B branch, of whom approximately 500 are non-white (Tr. 16; Gov't Ex. 1-pp5,8).

5. There were no non-white journeymen members of the A branch until 1967 (Gov't Ex. 15-3A(3) and (4)).

6. In the past, Local 638 has discriminated against minority workmen in admitting members to the A branch.

7. Members of the A branch have a higher hourly rate of pay than members of the B branch (Tr. 20).

8. Local 638 has 15 officers and eleven business agents, all of whom are white (Tr. 17; Gov't Ex. 1-p8).

9. The Mechanical Contractors Association of New York, Inc. ("MCA") is a trade association of heating, ventilating and air conditioning contractors in the New York area (Tr. 58).

10. MCA has approximately 60 members who employ members of Local 638. (Tr. 59).

II. Membership Requirements

11. The only operative requirements for membership in the A branch are that each applicant must have at least 5 years of practical working experience in the plumbing and pipe fitting industry and must be of good moral character. (Gov't. Ex. 2-sec. 158, 162).

12. Procedurally, applicants to the A branch send letters to the union stating their qualifications, which letters are reviewed by a committee composed of three of the Union's officers (Gov't Ex. 1-p.13). These applications are kept on file (Tr. 22) and when additional members are needed in the union - a determination which is based upon the demand for labor (Tr. 21) - applicants are called down, interviewed and, if they have the necessary qualifications, accepted (Tr. 20-1).

13. The union's application process is designed to keep the union membership from being flooded (Tr. 487), by admission of only a small number of new members; this ensures the existence of a shortage of A men and ^{tends to give} guarantees them job security and high wages.

III. Advantages of A Branch Membership

14. Being a member of the A branch is a substantial aid in obtaining a job as a construction steamfitter in the territorial jurisdiction of Local 638 (Tr. 141; 235; 283).

15. Being a member of the A branch is a prerequisite to obtaining job security and preventing early lay-offs. (Tr. 101, 109, 235, 251, 270, 283, 302).

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16. Another advantage of A branch membership is the greater opportunity for advancement (Tr. 123-30).

17. A fourth advantage of A branch membership is the greater opportunity to earn overtime pay (Tr. 270; 501-2).

IV. Shortage of Men in A Branch

18. In the post-war era, there has been a shortage of construction steamfitters in the New York area (Tr. 152, 171-2, 182, 197-9, 357, 464, 528) as well as a shortage of welders (Tr. 152, 172).

19. As a result of said shortage of manpower, the employers have been required to expend substantial monies for overtime (Tr. 153, 172, 463).

20. In addition, the union has referred B men to work as construction steamfitters in its jurisdiction (Gov't Ex. 1-pp. 27-8, 35).

21. At present there are at least 75 minority members of the B branch and approximately 100 minority non-union men who are working as construction steamfitters in the jurisdiction of Local 638 (Tr. 75-8; Gov't Ex. 7,8).

22. The minority workmen presently employed as construction steamfitters receive A scale wages. (Gov't Ex. 1-p.11).

V. Minority Workmen and Their Qualifications

23. The Joint Apprenticeship Program of the Workers Defense League ("WDL") is a non-profit organization funded by the U.S. Department of Labor whose purpose is to recruit and place minority construction workers (Tr. 212).

24. Last summer the UDL, which is the recognized authority for profession recruitment of minorities in the construction business (Tr. 70-1) recruited one hundred minority workmen who were placed in jobs as construction steamfitters by members of the MCA (Tr. 70).

25. Representatives of the employers reviewed the background of these men (Tr. 71-2), all of whom had at least five years experience in the pipefitting industry. (Tr. 83-4)

26. These minority workmen were tested by the recognized testing authorities to determine who could weld (Tr. 72-3) and, although these men were not given the normal course (Tr. 75), 25 men were certified and another 25 scored high on the test (Tr. 73).

27. The fifty workmen who scored well on the test were given welding jobs and the other men were employed as steamfitters by members of MCA (Tr. 73-4).

28. The minority workmen (B branch members and non-union) who are presently employed as construction steamfitters are doing the same kind of work as members of the A branch on their respective job sites (Tr. 100, 125, 139, 154, 235, 269, 281, 301).

29. Many of said minority workmen have far more than 5 years experience in the pipefitting industry (Tr. 83, 99, 107, 121, 137, 231, 248, 298, 499).

30. The employers find these ¹⁶⁹ minority workmen on the whole to be as competent as A men (Tr. 154, 156, 172, 194, 207) and wish to keep them on (Tr. 13).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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JRM

VI. Union Membership for Minorities

31. The ¹⁶⁹~~225~~ minority workmen desire to join the A branch of Local 638 (Tr. 101, 109, 128, 141, 234, 251, 283, 302).

32. A number of the minority workmen have applied for membership in the A branch (Tr. 102, 130-1, 141-2, 270-1, 302-3; Gov't. Ex. 10, 12, 13) but none have become members (Tr. 101, 128-132, 140-1, 270-1, 302).

33. Others have not applied for A branch membership because they believed such an application would be useless (Tr. 109, 235).

34. All of the minority workmen meet the requirements to become members of the A branch.

35. The union's denial of membership in the A branch to these ¹⁶⁹~~225~~ minority workmen constitutes a discrimination based upon race and national origin.

JRM

CONCLUSION OF IAW

1. Local 638 is a labor organization within the meaning of 42 U.S.C. §2000e(d) and is engaged in an industry affecting commerce within the meaning of 42 U.S.C. §2000e(c).

2. The Court has jurisdiction over this action by virtue of 42 U.S.C. §2000e et seq. The Attorney General is authorized under the Civil Rights Act of 1964 to institute suit to enjoin a pattern or practice of discrimination and request such relief as may be necessary to insure the full enjoyment of rights described in Title VII. 42 U.S.C. §2000e-6(a).

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3. The government has established a prima facie case that defendant Local 638 has pursued a pattern and practice of conduct with respect to employment opportunities in the construction industry which has denied minorities the same opportunities available to whites. Parham v. Southwestern Bell Telephone Co., 433 F.2d 421 (8th Cir. 1970); Jones v. Lee Way Motor Freight, Inc., 431 F.2d 245 (10th Cir. 1970); United States v. Dillon Supply Company, 429 F.2d 800 (4th Cir. 1970); Local 139, United Papermakers and Paperworkers v. United States, 416 F.2d 980 (5th Cir. 1969), cert. denied, 397 U.S. 919 (1970); United States v. Sheet Metal Workers, Local 36, 416 F.2d 123 (8th Cir. 1969); United States v. Hayes International Corporation, 415 F.2d 1038 (5th Cir. 1969); Rios v. Enterprise Ass'n Steamfitters Local U #638 of U.A., et al., 326 F. Supp. 193 (S.D.N.Y. 1971).

4. The defendant Local 638's membership policies, which the Government has established as having the effect of perpetuating past discrimination, are unlawful. See United States v. Bethlehem Steel Corp., 446 F.2d 652 (2d Cir. 1971); Jones v. Lee Way Motor Freight, Inc., supra United States v. IREW, Local 38, 428 F.2d 144 (6th Cir. 1970) cert. denied, 400 U.S. 943 (1970); Local 189, United Papermakers and Paperworkers v. United States, supra; United States v. Sheet Metal Workers, Local 36, supra; Local 53, Int'l Ass'n of Heat & Frost Workers v. Vogler, 407 F.2d 1047 (5th Cir. 1969); Quarles v. Phillip Morris, Inc., 278 F. Supp. 505 (E.D. Va. 1968).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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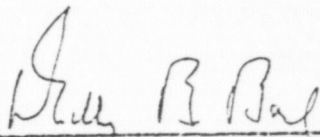
JUL 1972
76-1674

5. The government has shown probability of ultimate success on the merits, that the harm which will occur if the preliminary injunction is not issued far outweighs the harm to the union and the fact that the granting of relief herein is in the public interest. Hence, the government is entitled to preliminary relief in this case. See cases cited in the Government's Memorandum of Law submitted in support of this motion, dated November 9, 1971.

Dated: New York, New York

December 3, 1972

January



U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GEORGE RIOS, et al.,

plaintiffs,

-against-

ENTERPRISE ASSOCIATION STEAMFITTERS
LOCAL 638 OF U.A., et al.,

Defendants

UNITED STATES OF AMERICA,

Plaintiff,

-against-

ENTERPRISE ASSOCIATION STEAMFITTERS
LOCAL 638 U.A., et al.,

Defendants

PRE-TRIAL ORDER

On December 15, 1972, the attorneys for the parties herein appeared before the Court at a pre-trial conference pursuant to Rule 16 of the Federal Rules of Civil Procedure, and the following action was taken:

1. These lawsuits are hereby consolidated as one action for purposes of trial.
2. The parties agreed that the trial of this action shall be based upon the pleadings. There are no amendments to the pleadings, and none of the issues raised in the pleadings is abandoned.
3. Pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, the transcripts of the hearings heretofore had herein before Judge Frankel and Judge Bonsal, the exhibits admitted into evidence therein and their respective Opinions, Findings



Conclusions and Orders (copies of which are annexed hereto as Exhibits A & B) are part of the record of this trial and need not be repeated on trial.

4. The parties have stipulated that the facts set forth in Exhibit C annexed hereto are not in dispute in this action. *(each party is aware of the facts set forth in Exhibit C and there is no dispute as to the facts set forth in Exhibit C)*

5. The parties have stipulated that there is no dispute as the following points of law:

a. Enterprise Association Steamfitters Local Union #633 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (hereafter "the Union") is a labor organization within the meaning of 42 U.S.C. §2000e(d), is engaged in an industry affecting commerce within the meaning of 42 U.S.C. §2000e(d) and (e), and is properly named as a defendant to this action under 42 U.S.C. §2000e.

b. The Joint Steamfitting Apprenticeship Committee of the Steamfitters' Industry Educational Fund (hereafter "JAC") is a joint labor-management apprenticeship committee within the meaning of 42 U.S.C. §2000e-2 (d), is engaged in an industry affecting commerce within the meaning of 42 U.S.C. §2000e, and is properly named as a defendant to this action under 42 U.S.C. §2000e.

c. The Mechanical Contractors' Association of New York, Inc. (hereafter "MCA") is an association of steamfitting contractors, engaged in an industry affecting commerce within the meaning of 42 U.S.C. §2000e,

which has a collective bargaining agreement with the Union, and is properly named as a defendant in the Government's complaint under Rule 19(a)(1) of the Federal Rules of Civil Procedure.

6. The following are the issues for trial:

A. Plaintiffs Contentions

The following are a combination of the contentions of plaintiffs. Plaintiffs in both actions adhere to the allegations set forth in their respective complaints. Defendant MCA is named in the Government's complaint for purposes of relief only, pursuant to Rule 19(a)(1) of the Federal Rules of Civil Procedure.

1. Plaintiffs contend that defendants have violated 42 U.S.C. §§1981 and 1983, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e et seq. (hereafter "Title VII") in the following manner:

(a) Prior to the effective date of Title VII and continuing until the present date, defendants have maintained discriminatory practices in the selection, training, referral, employment and admission to the JAC apprenticeship programs and the Union's Construction Branch ("A" Branch"), of black and Spanish-surnamed workers in New York City and Nassau and Suffolk counties.

(b) Defendants have maintained informal methods of communicating the existence of and the assignment to available work, which ensure that such work is available almost exclusively to the predominantly white A branch membership and white friends and acquaintances of A Branch members.

(c) Defendants have allowed whites to become members of the A Branch through the informal discriminatory methods of admission previously found by this Court (See Exhibits A and B) and otherwise have allowed whites to gain access to employment in the steamfitting industry and access to membership in the A Branch as alternatives to admission through the apprenticeship program operated by the defendants, while requiring black and Spanish--surnamed persons to complete that program prior to being admitted to membership in the A Branch and employment in the steamfitting industry.

(d) Since Judge Bonsal's Order dated January 3, 1972 defendant Union has continued to use an informal method of admitting white applicants directly to journeyman membership in the A Branch, while denying equal access to its A Branch to black and Spanish-Surnamed workers.

(e) The written tests and other requirements for admission of qualified steamfitters as journeymen members of the A Branch proposed by the Union pursuant to Judge Bonsal's Order of January 3, 1972, will unlawfully discriminate against black and Spanish-surnamed applicants, and perpetuate the discriminatory practices previously found by this Court (See Exhibits A and B).

(f) Defendants have restricted and acquiesced in the restriction of the number of persons allowed access to A Branch steamfitting work, thereby denying black and Spanish-surnamed workers equal employment opportunities and permitting white members of the A Branch to earn large amounts of overtime pay.

(g) Defendants have preferentially

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allowed access to steamfitting work to persons related to members of the A Branch, which policy, because the vast majority of such members are white, have resulted in the exclusion of black and Spanish-surnamed workers from such work.

(h) Defendants have adopted and implemented selection procedures for admission to the apprenticeship program which operate, individually and in combination, to prevent black and Spanish-surnamed individuals from gaining equal access to apprenticeship status.

(i) Defendants have adopted and implemented an apprenticeship program which: (1) is not large enough to provide a sufficient number of journeymen for the steamfitting industry; (2) is longer than is necessary to train journeymen steamfitters; (3) requires training and testing which is not reasonably related to the actual work required of steamfitters; all of which operate, individually and in combination, to prevent black and Spanish-surnamed individuals from gaining equal access to journeyman status.

(j) Defendants have preferentially admitted to the apprenticeship program persons related to members of the Union and members and officers and employees of members of MCA and JAC, which practice has resulted in the exclusion of black and Spanish-surnamed workers from that program.

(k) Defendants have a reputation of being discriminatory in minority communities, which reputation operates to discourage black and Spanish-surnamed workers from seeking employment in the steamfitting industry.

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from applying to and completing the apprenticeship program and from seeking membership in the Union.

2. Plaintiffs contend that, to remedy the effects of the above-described discriminatory practices, defendants have been and are under an obligation to take affirmative action to recruit, train, admit to journeyman membership in the A Branch, employ and refer for employment, substantial numbers of black and Spanish-surnamed workers.

3. Plaintiffs contend that, as a result of the above-described unlawful discriminatory practices of the defendants, black and Spanish-surnamed individuals have suffered financial loss and are, therefore, entitled to receive back pay in amounts to be determined subsequent to the trial of this action.

4. Plaintiffs in 71 Civ. 847 contend that they are entitled to attorneys' fees pursuant to 42 U.S.C. § 2000e(5)(k).

B. Contentions of Defendant MCA

1. That it is not subject to 42 U.S.C. §§ 1981, 1983. In the event defendant is found subject to said sections, defendant contends that it has not violated those provisions.

2. That it is not subject to Title VII. In the event defendant is found subject to said sections, defendant contends that it has not violated those provisions.

C. Contentions of Defendant JAC

1. That it is not subject to 42 U.S.C. §§ 1981,

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1983. In the event defendant is found subject to said sections, defendant contends that it has not violated those provisions.

2. That it has not violated Title VII.

3. That plaintiff Rutledge is not a proper representative of any class and has failed to exhaust his administrative remedies and to comply with the requirements of 42 U.S.C. §§ 2000e-5(d).

4. That the training given throughout the apprenticeship program is reasonably related and necessary to the actual work required of steamfitters.

5. That the need for apprentice-trained steamfitters is increasing, in light of the evolving technology in the industry.

6. That individuals are admitted to the apprenticeship program on the basis of their qualifications. The JAC has taken affirmative action as required and approved by the New York State Department of Labor.

7. That it has adopted a new apprenticeship program which contains an enlarged affirmative action plan to recruit black and Spanish surnamed individuals into the apprenticeship program, from which said individuals may become members of A Branch.

D. Contentions of Defendant Union

1. That it is not subject to 42 U.S.C. §§ 1981, 1983. In the event defendant is found subject to said

sections, defendant contends that it has not violated those provisions.

2. That it has not violated Title VII.

3. That plaintiff Rutledge is not a proper representative of any class and has failed to exhaust his administrative remedies and to comply with the requirements of 42 U.S.C. § 2000e-5(d).

4. That the training and testing given throughout the apprenticeship program are reasonably related and necessary to the actual work required of steamfitters.

5. That the need for apprentice-trained steamfitters is increasing in light of the evolving technology in the industry.

6. That individuals are admitted to the apprenticeship program on the basis of their qualifications. The JAC has taken affirmative action as required and approved by the New York State Department of Labor.

7. That defendant JAC has a new apprenticeship program which contains an enlarged affirmative action plan to recruit black and Spanish surnamed individuals into the apprenticeship program from which said individuals may become members of A Branch.

8. That it is successfully pursuing an affirmative action program commonly referred to as the New York Plan.

9. That membership in A Branch must be limited to qualified steamfitters and that experience in the plumbing industry does not qualify an individual to be a journeyman steamfitter. The ability to do welding work alone does not qualify an individual to be a journeyman steamfitter.

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7. The parties expect to call the following witnesses at the trial of this action:

A. Plaintiffs' Witnesses

While reserving the right to add to or subtract from this list by filing a supplementary list prior to trial, plaintiffs propose to call some or all of the following witnesses:

1. Union Officers - Thomas J. Murray
James A. Mulligan
John J. Sheeran
John J. Tracey
Joseph Good
2. Union Foremen - Frank Catapono ✓
Thaddeus Kryjak ✓
William Yander ✓
Frederick Gruter ✓
Thomas E. Schlegel ✓
Gerald T. Campbell ✓
William Gund ✓
Thomas Ledwith ✓
3. Eric Lewis ✓
4. George Rios ✓
5. Eugene Jenkins ✓
6. Howard A. Kerr
7. Ernest Green
8. Charles Bremer ✓
9. Richard S. Barrett
10. Gary B'ckel
11. Erling Rohde
12. Lee Friend ✓
13. Frederick Clarke

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14. A number of individuals from the following categories:

- a) black and Spanish-surnamed steamfitters;
- b) union members who have completed apprenticeship;
- c) union members who have not completed apprenticeship;
- d) rejected applicants for the apprenticeship program;
- e) past and present apprentices; and
- f) persons who have sought employment for minority workers in the steamfitting industry.

15. Officials from various federal agencies, including the Department of Defense and the Armed Forces.

Plaintiffs also reserve the right to call additional witnesses at trial to rebut the evidence and testimony introduced by the defendants.

B. Defendant MCA Witnesses

Defendant MCA reserves the right to call any person listed in this Order as a prospective witness of any party and one or more officers or employees of MCA or its members. Defendant MCA further reserves the right to call additional witnesses and to introduce additional evidence in light of the evidence produced at the trial by any party.

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C. Defendant JAC Witnesses

Defendant JAC reserves the right to call any person listed in this Order as a prospective witness of any party and one or more members of JAC or persons employed by it. Defendant JAC further reserves the right to call additional witnesses and to introduce additional evidence in light of the evidence produced at the trial by any party.

D. Defendant Union Witnesses

1. Mr. Joseph P. Corcoran,
Director,
United Association Training Department for
Apprentices and Journeymen;
2. An Assistant in or Regional Representative of
Mr. Corcoran's office;
3. One or more of the following:
Officers or Representatives of the
United Association; officers and/or
business agents and/or foremen and/or
members of the Union;
4. One or more Government officials;
5. One or more instructors of apprentices;
6. Dr. Judah I. Gottesman
7. One or more individuals concerning the
"New York Plan".

Defendant union reserves the right to call any person listed in this Order as a prospective witness of any party and one or more members or officers of the union. The union further reserves the right to subtract from this list. Defendant union further reserves the right to call additional witnesses and to introduce additional evidence in light of the evidence produced at the trial by any party.

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8. The parties expect to introduce the

following exhibits at the trial of this action:

A. Plaintiffs' Exhibits

See Exhibit D annexed hereto.

B. Defendants' Exhibits

See Exhibit E annexed hereto.

Dated: New York, New York

December 2, 1972

December 22, 1972

SO ORDERED:

Richard B. Bond
United States District Judge

CONSENTED TO

Dennis R. Yeager
DENNIS R. YEAGER, Esq.

Attorney for Plaintiffs in 71 Civ. 847

WHITNEY NORTH SEYMOUR, Jr.
United States Attorney for the
Southern District of New York
Attorney for Plaintiff, the
United States of America, in 71 Civ. 2877By: Joel B. Harris

JOEL B. HARRIS

Assistant United States Attorney

DELSON & GORDON, Esqs.
Attorneys for Defendants
Local 638 and the JACBy: Thomas A. Shaw, Jr.

A Member of the Firm

BREED, ABBOTT & MORGAN, Esqs.
Attorneys for Defendants
MCA and the JACBy: Thomas A. Shaw, Jr.

THOMAS A. SHAW, Jr., Esq.

A Member of the Firm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

GEORGE RIOS, et al., :
 :
 Plaintiffs, : 71 Civ. 847
 :
 -against-

ENTERPRISE ASSOCIATION STEAMFITTERS :
 LOCAL UNION 638 of U.A., et al., :
 :
 Defendants. :

-----X

UNITED STATES OF AMERICA, :
 :
 Plaintiff, : 71 Civ. 2877
 :
 -against-

ENTERPRISE ASSOCIATION STEAMFITTERS :
 LOCAL UNION 638 of U.S., et al., :
 :
 Defendants. :

-----X

STIPULATION OF FACTS

✓ 1. Defendant Local 638 represents its members in collective bargaining with defendant MCA and other steamfitter contractors.

2. All of the present and past officers and business agents of Local 638 are white.

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(3. Since 1960, the total journeyman membership of the A branch has been as follows:

- (a) 1960 - 3644 members
- (b) 1961 - 3587 members
- (c) 1962 - 3541 members
- (d) 1963 - 3528 members
- (e) 1964 - 3598 members
- (f) 1965 - 3541 members
- (g) 1966 - 3549 members
- (h) 1967 - 3646 members
- (i) 1968 - 3822 members
- (j) 1969 - 3866 members
- (k) 1970 - 3827 members
- (l) 1971 - 3850 members

(4. Since 1960, the number of members of the union's Metal Trades Branch ("B branch"), has been as follows:

- (a) 1960 - 2220 members
- (b) 1961 - 2337 members
- (c) 1962 - 2545 members
- (d) 1963 - 2657 members
- (e) 1964 - 2847 members
- (f) 1965 - 2809 members
- (g) 1966 - 2875 members
- (h) 1967 - 2774 members
- (i) 1968 - 2866 members

(j) 1969 - 3335 members

(k) 1970 - 3656 members

(l) 1971 - 3862 members

5. MCA represents approximately 60 steamfitter contractors in the New York area.

6. All of the present and past officers of the MCA are white.

7. Pursuant to a 1960 Declaration of Trust, the Steamfitters Industry Educational Fund was created, the trustees consisting of 4 persons designated by Local 638 and 4 persons by MCA. Pursuant to the trust agreement, the trustees appoint the members of the JAC.

8. The JAC is a joint labor-management committee of 8 members. Since its formation, all members and employees of the JAC have been white.

9. Since 1960, the number of black and Spanish-surnamed journeymen in the A branch has been as follows:

	<u>Year</u>	<u>Black</u>	<u>Spanish-Surnamed</u>
(a)	1960-1966	none	none
(b)	1967	5 members	2 members
(c)	1968	5 members	2 members
(d)	1969	14 members	7 members
(e)	1970	14 members	7 members
(f)	1971	21 members	10 members
(g)	1972	129 members	62 members

10. Since January 1, 1972, 160 black and Spanish surnamed workers already employed in the steamfitting industry were admitted to full journeyman status in the A branch; this number represents 154 of the 169 workers whose admission was directed by Order of this Court dated January 3, 1972, and 6 who were admitted pursuant to agreement between the Government and Local 638.

11. Since January 1, 1972, 156 whites have been admitted to the A branch. None of these was given a written test or a practical test.

12. As of July 19, 1971, there were approximately 300 black members of the B branch and approximately 200 Spanish-surnamed members of the B branch.

13. As of July 19, 1971, nine hundred and seventy-three of the journeymen members of the A branch had at some time been enrolled in the apprenticeship program.

14. There is no formal method of referring workers for employment in the steamfitting industry in the New York area. Information concerning available employment is circulated informally by word of mouth and other means. Steamfitters seek work primarily by contacting members of Local 638, employer's foremen and superintendents and occasionally officers and agents of Local 638. Employers seek steamfitters by

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contacting members of Local 638 through their superintendents and foremen, and by contacting Local 638 and MCA.

15. JAC conducts a five-year apprenticeship training program consisting of a total of 720 hours of classroom work at the Delehanty Institute and Voorhees Technical Institute and 9100 hours of employment with steamfitter employers at construction sites. Upon successful completion of the program, an apprentice becomes a journeyman member of the A branch.

16. MCA, in its collective bargaining negotiations in 1966 and 1969, proposed to amend the previous agreements to require the indenturing into the industry of a minimum of 150 new apprentices annually, which proposals were not incorporated in the resulting collective bargaining agreements. The union's stated reason for rejection of such proposals was to ensure reasonably continuous employment opportunities for apprentices as required by the New York State Department of Labor, Bureau of Apprenticeship Training.

17. The first apprenticeship class was formed by JAC on December 15, 1947. The most recent apprenticeship class was indentured on June 15, 1971.

18. As of July 9, 1971, there were 408 participants in all the current classes of the apprenticeship program of whom 12 (2.94%) were black and 4 (0.98%) were Spanish-surnamed.

19. Since 1964, 492 apprentices have been indentured of whom 464 (94.3%) were white, 23 (4.67%) were black and 5 (1.01%) were Spanish-surnamed, as follows:

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<u>Year</u>	<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Spanish</u>
1964	55	47 (85.47%)	7 (12.72%)	1 (1.81%)
1965	0	0	0	0
1966	0	0	0	0
1967	45	43 (95.56%)	2 (4.44%)	0
1968	93	86 (92.48%)	5 (5.37%)	2 (2.15%)
1969	101	94 (93.07%)	5 (4.95%)	2 (1.98%)
1970	96	94 (97.92%)	2 (2.08%)	0
1971	102	100 (98.04%)	2 (1.96%)	0

20. Prior to 1964, apprenticeship applicants were selected by a personal interview conducted by members of JAC and there was no formal method of announcing the formation of new apprenticeship classes.

21. Since 1964, applicants for apprenticeship have been required to take a written examination.

22. JAC instituted the written aptitude examination as part of the apprenticeship program selection procedure in 1964. In that year, JAC, with the advice of New York University, was responsible for the selection of the tests and the determination of the passing score. There were no classes indentured in 1965 and 1966. In 1967, 1968, 1969, 1970 and 1971, JAC, with the advice of the Stevens Institute of Technology (hereafter "Stevens"), was responsible for the selection of the tests and determination of the passing score. The examinations were in four parts: (i) Verbal Meaning (Ability to understand ideas in words), (ii) Numerical Ability (Ability to work with numbers and handle

simple quantitative problems rapidly and accurately), (iii) Mechanical Reasoning (Ability to understand and apply basic mechanical principles) and (iv) Spatial Relations (Ability to visualize objects in 3-dimensional space).

23. On August 20 and September 17, 1964, New York University administered the examination for JAC and used the Henmon-Nelson tests Grade 9-10 Form A. No applicant was refused admission to the program on the basis of his test scores.

24. Since 1967, of the 1177 white applicants who have taken a written examination, 487 (41.37%) passed; of the 106 black applicants 11 (10.37%) passed; and of the 18 Spanish surnamed applicants 2 (11.11%) passed, as follows:

<u>Date</u>	<u>Test</u>	<u>Passing Score</u>	<u># White Applicants Taking Test</u>	<u># (%) Whites Passed</u>	<u># Black Applicants Taking Test</u>	<u># (%) Blacks Passed</u>	<u># Spanish Surnamed Taking Test</u>	<u># (%) Spanis. Surnamed Passed</u>
4/4/67	Differential Aptitude, Form M - Verbal Reason- ing, Numerical Ability, Mechanical Reasoning and Space Relation Tests	50% or higher	173	41 (23.69%)	11	2 (18.18%)	3	0
12/16/67	Scat 2A Multiple Aptitude Tests Applied Science and Mechanics Spatial Relations IID & IIID	50% or higher	188	44 (23.40%)	31	1 (3.22%)	7	1 (14.2%)
7/20/68	Scat 2B Atkins Spatial I and II Survey of Mechanical Insight	50% or 1 higher	137	37 (27%)	25	1 (4.0%)	4	1 (25.0%)
1/25/69	Hannon-Nelson Form B Bennett Mechanical Atkins Spatial	25% or 2 higher	157	100 (63.69%)	16	2 (12.5%)	3	0

1. In addition, eleven other applicants were offered admission to the program. Eight of these eleven were chosen on the basis of their cumulative score for all four parts of the exam, from amongst those who had achieved a score of 40th percentile or higher in each of the four components. In addition, three other individuals who had achieved a score of 30th percentile or higher on all four components were invited into the program. Consequently, 45 of the 137 white applicants (32.84%) and 4 of the 25 black applicants (16%) were invited into the program. For effect of this on overall total see footnote 3.

2. In addition, fifteen other applicants were offered admission to the program. Thirteen of these fifteen were chosen on the basis of their cumulative score for all four parts of the exam, from amongst those who failed the examination. In addition, Messrs. Bright and Thomas were invited into the program. Consequently, 94 of the 157 white applicants (59.87%), 5 of the 16 black applicants (31.25%) and 2 of the 3 Spanish surnamed applicants (66.66%) were invited into the program. For effect of this on overall total see footnote 3.

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<u>Date</u>	<u>Test</u>	<u>Passing Score</u>	<u># White Applicants Taking Test</u>	<u># (%) Whites Passed</u>	<u># Black Applicants Taking Test</u>	<u># (%) Blacks Passed</u>	<u># Spanish Surnamed Taking Test</u>	<u># (%) Spanish Surnamed Passed</u>
1/31/70	Scat 2B Parts II and III Bennett Mechanical Form T Minnesota Paper Form Board AA	25% or higher	202	107(52.97%)	16	3(18.75%)	0	0
11/21/70	Bennett Mechanical Form S Multiple Aptitude Test - #8 Two Dimensions Differential Aptitude Test - Form in Verbal and Numerical	25% or higher	320	158(49.37%)	7	2(28.57%)	1	0
Totals			1177	487(41.37%) ³	106	11(10.37%)	18	2(11.11%)

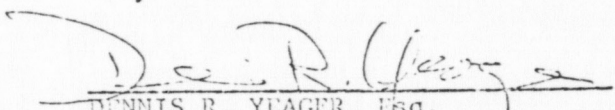
PRE-TRIAL ORDER, BONSAI, J.

3. Since additional persons were invited into the program (see footnotes 1 and 2), of the 1177 white applicants taking the test, 505 (42.90%) were invited into the program, of the 106 black applicants taking the test 17 (16.03%) were invited into the program, and of the 18 Spanish surnamed applicants taking the test 4 (22.22%) were invited into the program.

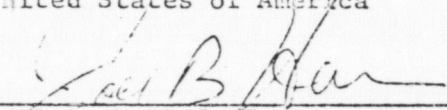
25. Since 1964 applicants who passed the written examination have been given a physical examination by a doctor selected by JAC.

Dated: New York, New York

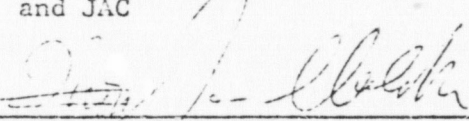
December 22, 1972


DENNIS R. YEAGER, Esq.
Attorney for Individual Plaintiffs

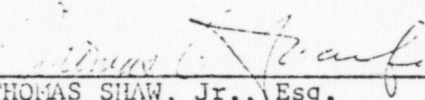
WHITNEY NORTH SEYMOUR, Jr.
United States Attorney for the
Southern District of New York
Attorney for Plaintiff, the
United States of America

By: 
JOEL B. HARRIS, Esq.
Assistant United States Attorney

DELSON & GORDON, Esqs.
Attorneys for Defendants Local 638
and JAC

By: 
A Member of the Firm

BREED ABBOTT & MORGAN, Esqs.
Attorneys for Defendants MCA and JAC

By: 
THOMAS SHAW, Jr., Esq.
A Member of the Firm

1 South 2

20

2 have one.

3 The selection of employees is done by superintendents
4 and foremen and very, very rarely, when employees cannot be
5 obtained that way, then the business agents are approached.

6 Employers, however, know that the better men get their
7 own jobs and the better men are on lists of employers who
8 the foremen and superintendents know are, you know, better
9 men and they would rather select --

10 THE COURT: I suppose the problem is that the fore-
11 men and superintendents, I take it, are white and the plaintiffs
12 are contending that, on the basis of the present way of doing
13 it, the whites are going to get the job. I suppose that is
14 it.

15 MR. FLEISCHMAN: Well, but the foremen and the
16 superintendents are the representatives of the employers, and
17 they do uphold the employers desires. In many instances, the
18 foremen are completely disregarded. It is the superintendents
19 who do the hiring and the superintendents, some of them, are
20 not even in the industry; they may be engineers, they may have
21 other qualifications, but they are not even members of the A-
22 Branch and maybe even not members of any local, so that the
23 hiring is done by the employers.

24 Now, what militates towards the hiring of minority
25 groups? I think we have to be realistic that because of

John 11

Charon Direct

29

2 Q How many?

3 A Eight gangs. Sixteen men, all together.

4 Q Are any of those members of the A-Branch of Local
5 638?

6 A Yes. The majority of them.

7 Q Are you doing the same kind of work they are?

8 A Yes, I do.

9 Q Are you receiving A wages?

10 A Yes.

11 Q Are you a member of the A-Branch of Local 638?

12 A No, I am not.

13 Q Are you a member of the B-Branch?

14 A No.

15 Q Do you wish to join the A-Branch?

16 A Yes.

17 Q Why?

18 A I want job security for benefits of my family and
19 the same that all A-members, the same as the all A-members,
20 because I do the same work they do.

21 Q Now, did you ever try and join the A-Branch of
22 Local 638?

23 A Yes.

24 Q Could you tell us when?

25 A I personally went to the union hall, 841 Broadway.

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Charon-direct

30

I asked --

THE COURT: When was this?

THE WITNESS: October 30, 1972.

A I was there. I personally asked the receptionist if I can -- what I can do to get application to join the union. I been told there is too many A-men out of a job at that time they couldn't help me.

MR. FLEISCHMAN: I object.

Q Is that what she told you?

A Yes.

MR. FLEISCHMAN: Wait a minute. Pardon me.

I objected, your Honor.

THE COURT: I know you did.

MR. FLEISCHMAN: It is hearsay.

THE COURT: You went there, you asked for a form. Did you get a form application?

THE WITNESS: No.

THE COURT: Couldn't get an application? All right.

MR. FLEISCHMAN: I object to that portion of the answer as to --

MR. HARRIS: May I be heard?

THE COURT: No. I will allow it. It is not for the truth of it. It is just his remembering of what was said

j5wh 22

Arbuckle-direct

40

1 A Plainfield, New Jersey.

2 Q Is that a steamfitting local?

3 A Yes, steamfitting, pipefitters and apprenticeship
4 local union.

5 Q How long have you worked there?

6 A For about four years.

7 Q What kind of work are you doing there?

8 A Welding and steamfitting.

9 Q Are you making journeyman wages there?

10 A Yes, I am.

11 Q Have you ever tried to get construction work in
12 New York?

13 A Yes. Before, I went to Jersey, I had been going
14 around to certain job sites which I tried to get jobs, and I
15 was told I haven't the right book, which is supposed to mean
16 I haven't got an A-book.

17 THE COURT: When did this happen?

18 THE WITNESS: This happened in 1969.

19 Q Would you like to become a member of the A-Branch
20 of Local 638?

21 A Yes, I do have, made several attempts and have been
22 advised by delegates of the B-union to write certain letters to
23 certain, to the president the second, John Morey and Mulligan,
24 or something like that.

jbwn 23

Arbuckle-direct

41

Q Who gave you this advice?

A Delegates at the B-local.

Q Do you remember his name?

A I really can't remember his name.

Q Where did he give you this advice?

A At union meetings. I go to several union meetings of the B-Branch.

Q How long ago did this happen?

A This happened in 1972.

THE COURT: Do you remember where the meeting was?

THE WITNESS: Yes. At 841 Broadway.

Q Did you write any such letters?

A Yes, that day I write several letters, three letters which I did write and I am still waiting for a reply. I haven't got a reply ever since.

Q Have you ever asked what happened to your application?

A Yes. I went to several meetings and I have been inquiring which I have been told that my letters have been sent to Washington to be approved and they are holding the file, I have to wait until I be approved from Washington.

Q Have you received any further reply?

A No further reply.

MR. GLASSMAN: I have no further questions.

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Barthelness-direct

58

2 Q Have you ever been in the apprenticeship program?

3 A No. They didn't have apprentice programs at the
4 time.

5 Q Did you take a test for admission to the A-Branch?

6 A No. It wasn't required. You were a helper and you
7 did whatever the fitter told you to do.

8 THE COURT: Tell me about that, Mr. Barthelness.
9 You were a helper?

10 THE WITNESS: A helper, yes, sir.

11 THE COURT: How long?

12 THE WITNESS: Five years.

13 Q How did you become a helper?

14 A Well, my father recommended me to the local and we
15 had even a separate union which is now extinct, 639, and I had
16 tried -- I was 35 years of age when I come in and I'd tried
17 to get into the local because my father, my brother and my
18 uncles had been members.

19 THE COURT: All members of 638?

20 THE WITNESS: Of 639, yes, sir.

21 A And in the interim, my father was Superintendent of
22 Houses and we were, being part of the kids, we had to fire
23 boilers. If there was anything that broke down, we were in-
24 doctrinated by our dad how to fix things and got used to
25 branches and stuff like that.

jbnw 3

Barthelness-direct

59

Q Now, in addition to the person you just mentioned, have you had any other relatives by blood or marriage who have been members of Local 638?

A Yes, four uncles.

THE COURT: Four what?

THE WITNESS: Uncles. Four.

Q Where are you presently employed?

A Out at State University in Stoney Brook, working for the Martin Mechanical Engineering.

Q In what capacity?

A I am just one of the indians; steamfitter.

THE COURT: That is the first time I have heard them called Indians here.

Q Were you previously employed by Blackhawk Donovan?

A Oh, yes, sir.

Q And for how long was that?

A It was off and on, at least two years or so.

Q Where was that?

A Northport, the Northport Veterans Hospital.

Q And in what capacity were you employed by them?

A I started off as a journeyman steamfitter and I wound up running the job.

Q That would be the foreman?

A Foreman, yes.

John J.

Barthelme-direct

50

Q Were any of your sons employed at that job?

A For a short period.

Q How many of them?

A Three. One lasted one month, the other one quit after two months and another lad quit after about three months work but I was there quite awhile.

Q Since you have been a member of the A-Branch would you say that outside of strikes and when illness and vacation came, you worked steadily?

A Oh, yes, sir, ever since I was initiated.

Q Back in 1942?

A Oh, yes.

MR. HARRIS: No further questions.

THE COURT: You are a lifetime -- not that but a great many years member of the A-Branch. Have you worked in big buildings and little buildings.

THE WITNESS: Oh, yes.

THE COURT: And do you do welding?

THE WITNESS: I do welding.

THE COURT: How much of your time would you say you have spent welding?

THE WITNESS: Well, very little because most of my work was administrative work, the foreman's job; laying out.

THE COURT: You were laying out the job?

1 John B Barthelmess- Cross

64

2 it picked up?

3 A Yes, sir. Plenty of times. I was always lucky.
4 I always had a job.

5 Q But some people didn't?

6 A Well, that's true.

7 Q And are you working at the present time?

8 A Yes, sir. I just started here a few days ago.

9 Q You have been ill?

10 A Yes, sir.

11 Q Who appoints the superintendent on the job?

12 A Well, the superintendent is usually by the owner or
13 the builder or the contractor. He sees to it that the
14 superintendent carries out his orders and usually it is a man
15 versed in mechanical installations.

16 It could be an engineer of sorts.

17 Q He doesn't have to be a steamfitter?

18 A Not necessarily, no, sir.

19 Q Does he do any hiring?

20 A Oh, yes, sir.

21 Q Who would you say in the industry does most of the
22 hiring? Superintendents?

23 A No. The employers.

24 Q The employer himself?

25 A Well, through the instrumentality of a superintendent?

John 9

Barthelmess-cross:

65

Q The employer through the instrumentality of the superintendent does the hiring?

A If you don't get by the superintendent, you don't get on the job. And he is not necessarily a 638 man, either.

Q What kind of steamfitting work have you done over the last 33 years?

A Well, I have had quite a few --

Thirty-one years, I should say.

A That is right, sir.

As I say, mostly the work -- I have been in charge of work, of layout and, et cetera, among which was refrigeration -- I can give you the names of the jobs. The International Hotel is number one.

Q What did you do at the International Hotel?

A I supervised the installation there.

Q What kind of work was involved?

A Well, they had air conditioning, heating and mostly all the pipe work; all your pipe work, installation of pumps and hydraulic systems. We had, they had some sort of thing like they have in Macy's, you press buttons and things, we installed that.

Also, the tailoring system, you had a little place and it was our job to see that it was put in, for pressing clothes.

jbmh 10

Barthelness-cross

66

We had high pressure boilers and low pressure boilers, both for heat and for industrial work which surrounds a hotel.

I'd the installation of a power house in Brookhaven. We installed three boilers. I forget what the energy was, but I know it operated on 125 pounds and it heated or activated everything that was concerned with Brookhaven Laboratory.

Then the installation of a hospital and the work surrounding a hospital. There is quite a bit of mechanical installations for sterilization and whatever, that would require, be required in a hospital.

Well, the other ones would be --

Q How about sprinkler work?

A Sprinkler work, too, oh, yes, you had occasion to do that. I worked for Raisler Company and went out of town for them, worked in three or four different places for them. Every place.

MR. FLEISCHMAN: I have no further questions.

MR. SHAW: No further questions.

MR. HARRIS: I have some redirect, your Honor.

REDIRECT EXAMINATION

BY MR. HARRIS:

Q Mr. Barthelness, you said superintendents are not necessarily steamfitters. But are there even often steamfitters?

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xx

John 11

Bartholmess-cross

67

A Not in my case.

Q Or ex-steamfitters?

A Not in our case, no.

THE COURT: Not in your experience?

THE WITNESS: Not in my experience, and that covers a good deal -- they were all mechanical engineers, I'll say that.

Q Now, how many jobs did you say you were foreman on?

A Well, offhand, I would have to enumerate -- oh, at least fifty. And they were good-sized installations.

Q And as foreman, did you ever have the first crack at hiring men for those jobs?

A Not necessarily. We used to make recommendations, you know, if somebody, that you knew or you tried to secure, welders.

THE COURT: This would be a recommendation of the employer, is that right, sir?

THE WITNESS: I would recommend to our superintendent.

THE COURT: To your superintendent?

THE WITNESS: Yes, sir.

Q Who would these people be that you would recommend?

A Men working out of 638; associates.

Q People you knew?

jdw 20

Riley-direct

76

2 A Yes.

3 Q Are you a member of Local 638?

4 A 638-B.

5 Q When did you become a member of the B-Branch?

6 A In August 1969.

7 Q Is that when you were employed at Tubeco?

8 A Yes.

9 Q Do you wish to join the A-Branch?

10 A Yes.

11 Q Why is that?

12 A Well, for job security, so that I can get a job
13 whenever I am laid off and need another job.

14 Q Have you ever attempted to join the A-Branch of
15 Local 638?

16 A Yes.

17 Q When was that?

18 A Well, I went to the union office sometime in 1970,
19 I guess.

20 Q 1970?

21 A Yes, sir, somewhere around that time and I was told
22 that I have, I must have three years as B, in the B local.

23 Q Who told you that?

24 A Somebody in the office, the woman, I guess, I don't
25 remember her name.

1 jbw: 21

Riley-direct

77

2 Q Would that be a receptionist?

3 A Yes, the receptionist, something like that.

4 And well, after I had the three years, I wrote them
5 a letter, which they told me to do and I got a reply stating
6 that they got my application on file; that is it.

7 Q You wrote them a letter. What did you ask them
8 in the letter?

9 A Well, I told them that I was advised, I was told
10 once before that when I have the required amount of years
11 with the B local, to write this letter and that is what I am
12 doing and to send me a reply on that matter.

13 Q I would like to show you Plaintiff's Exhibit 196
14 for identification and ask if that is the reply you received?

15 A Yes, that is the reply.

16 MR. HARRIS: I offer it in evidence.

xx 17 THE COURT: I take it there is no objection.
18 It will be received.

19 MR. FLEISCHMAN: No objection.

20 MR. SHAW: No objection.

xx 21 (Plaintiff's Exhibits 196 was received in evi-
22 dence.)

23 Q Have you received any further response to your
24 letter?

25 A No.

MR. HARRIS: No further questions.

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JAN 20

Roger-direct

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2 A Yes, sir, I would.

3 Q Why would you like to become a member of the A-
4 Branch.

5 A I would like job security, and I would like to make
6 my family more comfortable and I would like to live a better
7 life and I am entitled to the benefits, because I am doing
8 the work.

9 Q Are there any A-men on your present job?

10 A Yes.

11 Q Are you doing the same work as A-men on the job?

12 A Yes.

13 Q Have you ever applied for admission to the A-Branch?

14 A Yes, I have.

15 Q When did you apply?

16 A Well, I have written several letters, about three
17 or letters. I got no reply from them and then here recently,
18 I wrote another letter, about two weeks ago or so, maybe a
19 little longer, I am not sure of the date, and I got a reply
20 from them.

21 Q When did you write your earlier letters?

22 A When I joined the B local.

23 Q About how long ago was that?

24 A About two and a half years ago.

25 Q What subsequent letter did you write when? When after
that?

Page 29

Roger-direct

85

1 A Then again I wrote them about a year later and
2 then about seven or eight months ago, then I just wrote them
3 another one, like I said, about a month or so.

4 Q And did you receive any response at all to your
5 earlier letters?

6 A Yes, I did. I got a response to the last letter
7 I wrote.

8 THE COURT: The question was whether you got a
9 response to the earlier letters.

10 THE WITNESS: No, sir.

11 Q I show you Plaintiff's Exhibit 199 for identifi-
12 cation.

13 Can you describe this?

14 A Yes, sir. This is the reply that I got from them.

15 Q And what date was that reply?

16 A December 20, 1972.

17 MR. GLASSMAN: I offer this in evidence.

WBS-11

Lopes - direct

96

1 A I would like to work without being worried about
2 somebody coming in and showing an A book and taking me off
3 the job, as I have been doing.

4 Q Do the A men make more money?

5 A Close to double.

6 Q Did you ever try to join the A Branch?

7 A Many times.

8 Q How did you do that?

9 A I was informed by other members, and people who
10 became A men, to go over to the place. Then I was told by
11 other people they aren't there, they won't see you, so you
12 have to write a letter. I wrote a few letters, and never
13 got an answer until very recently.

14 Q When did you start writing letters?

15 A When I first joined B.

16 Q When?

17 A November 1970.

18 Q You started writing then?

19 A I started writing yearly.

20 THE COURT: Yearly?

21 THE WITNESS: Every November I wrote a letter.
22 So this would be my third letter.

23 Q Did you get a response to your first letter?

24 A The first and second I never got a response.

106-12

Lopez - direct

Q Did you get a response to your most recent letter?

A I sent a certified letter and asked for a receipt so I could have some kind of an answer.

Q Let me show you Plaintiff's Exhibit 202 for identification, and ask if this is the response you got to your most recent letter.

A That's it.

MR. HARRIS: I offer that in evidence.

MR. FLEISCHMAN: No objection.

(Plaintiff's Exhibit No. 202 was received in evidence.)

Q Have you ever received any further communication in response to your most recent letter?

A The very last one, that's it.

Q Other than Exhibit 202, have you heard again?

A Well, you know, you are behind in dues, or something like that, but not trying to get into the local.

Q You haven't gotten any --

A I got literature from them.

Q I mean any further response.

A No.

MR. HARRIS: No further questions.

MR. YEAGER: No questions.

JB-2

Laito-direct

103

Heating. I worked for Wolff and Munier, and back to Broadway Mechanical.

Q What kind of work have you been doing?

A I do plastic welding, pipe welding. I am not a certified welder. I do pipe fitting, sprinkler, heating and air conditioning.

Q Where are you presently employed?

A Broadway Mechanical.

Q What kind of work are you doing there?

A Working on refrigeration coils. Tha-'s working with plastic pipe.

Q What are you presently being paid?

A \$5.00 an hour.

Q Are you a member of Local 638?

A Yes; the B Branch.

Q How long have you been a member of the B Branch?

A Five years.

Q Do you want to join the A Branch of Local 638?

A Yes, I do.

Q Why do you want to join the A Branch?

A For more money for a little more security, more benefits, because I am not getting any kind of benefits right now.

Q Have you ever applied for membership in the A Branch?

j5-3

Laito-Direct

104

A Yes, I have.

Q When have you applied?

A December of 1971 and I was told by the receptionist that I would have to -- she took time, five minutes as she walked away, and went into one of the offices. She came back and told me that Mr. James Mulligan would like me to write a written request, so I did and I didn't get no answer.

So, January 4, 1972, I sent a registered letter to Mr. James Mulligan. I hadn't gotten no response to it --

Q When you said you asked the receptionist, where was the receptionist located?

A 341 Broadway, the sixth floor.

Q Did you receive any response from your letter?

A No.

Q Have you written any subsequent letters?

A January 4, 1972, I sent a registered letter in which I got a receipt for that; you have it.

Q Have you written any letters after that?

A Yes. December 11, I sent them a certified letter, which I had a receipt for.

Q I show you Plaintiff Exhibit 197 for identification. Is this the letter you sent in December 1972?

A Yes, I did.

MR. GLASSMAN: I offer it in evidence.

93-4

Laito-direct

105

THE COURT: I take it there is no objection. It will be received.

(Plaintiff Exhibit 197 received in evidence.)

Q Have you received any response subsequent to sending that letter?

A The last letter? Yes, I did.

Q Show you Plaintiff Exhibit 198 for identification. Is this the response you received?

A Yes, it is.

Q What date did you receive that response?

A On the 15th of December.

Q What year?

A 1972.

MR. GLASSMAN: I offer it in evidence.

MR. FLEISCHMAN: No objection.

(Plaintiff Exhibit 198 received in evidence.)

Q Is that the first response you have ever received from the Union?

A No. I have a letter from James Mulligan himself, demanding \$10 reinstatement. Meanwhile, he doesn't give me five minutes of his time.

MR. FLEISCHMAN: I object.

THE COURT: No. Don't tell us that. You say you got a letter from him. When was that?

THE WITNESS: 1972. I don't remember the month.

Q Did that letter have anything to do with your application for admission?

A No.

Q Have you heard any further word regarding your application for admission?

A Just the last letter, that they are putting me on file.

Q And have you received any word since you received that letter?

A No.

MR. GLASSMAN: No further questions.

THE COURT: Mr. Yeager?

MR. YEAGER: No questions.

THE COURT: Mr. Fleischman?

CROSS EXAMINATION

BY MR. FLEISCHMAN:

Q Mr. Laito, do you have any relatives in the industry?

A No, I don't.

Q Do you know a Norman Laito?

A No, I don't. He is not related to me.

THE COURT: You don't know him, any way?

THE WITNESS: No, I don't. They keep mentioning his name because my last name is familiar. He is six feet --

THE COURT: You don't know him?

134

DeBourgh - direct

134

Q Do you wish to join KTA branch?

A Yes, I do.

Q Why is that?

A More job security and better pay.

Q Have you ever attempted to join the A branch?

A Yes. Twice.

Q When was the first time?

A The first time sometime in 1971. I can't remember the date.

Q What did you do?

A I ade application requesting to be a member from the B to the A branch, but I get no reply.

THE COURT: How did you make this application, sir? Did you write a letter?

THE WITNESS: I wrote a letter and mailed it in.

Q Did you make any further attempts after that time?

A Yes, I made an attempt sometime in September 1971. The replied to that letter.

Q Let me show you Plaintiff's Exhibit 200 for identification and ask if that is the letter you referred to in September of 1972?

A This is the letter I wrote.

Q Did you mail this letter?

A I took it in personally.

mde 15

DeBourgh - direct

135

Q Who did you give it to?

A The lady at the desk at the front.

Q Did she say anything at that time?

A She just took it and said it would have to go for reference or something like that.

MR. HARRIS: I offer this in evidence.

(Plaintiff's Exhibit 200 received in evidence.)

Q Now, Mr. DeBourgh, did you receive a response to that letter?

A Yes, I did.

Q I show you Plaintiff's Exhibit 201 for identification. Is that the response you received, a copy of the response?

A Yes.

MR. HARRIS: I offer that in evidence.

MR. FLEISCHMAN: No objection.

(Plaintiff's Exhibit 201 received in evidence.)

Q Mr. DeBourgh, since September 12, the date of Exhibit 201, have you gotten any further word from the union with respect to your application?

A No.

MR. HARRIS: No further questions.

BY MR. YAEGER:

Q Mr. DeBourgh, how much did you earn at Tubeco?

Page 13

Pierre - direct

164

Q What kind of work are you doing on that job?

A Steamfitting and welding.

Q Are there other steamfitters on that job?

A Yes.

Q About how many?

A Approximately 50.

Q Are you doing the same kind of work they are doing?

A Yes.

Q Are you receiving A wages?

A Yes.

Q Would you tell us how you found that job?

A Through the foreman.

Q The foreman at that job?

A Yes, foreman and laid on, LEITO.

Q Are you a member of Local 638?

A Member of the B Branch.

Q Do you want to joint the A Branch?

A Yes.

Q Why?

A Because the base and security, job security.

Q Have you ever tried to join the A Branch?

A Yes. I tried on the 24th of October, 1972.

Q What did you do then?

A I took application by hand to the office, the B

Page 14

Pierre - direct

165

Branch.

Q Let me show you Plaintiff's Exhibit 209 for identification. Is this what you are referring to?

A Yes.

MR. HARRIS: I offer this in evidence.

THE COURT: Any objection.

MR. FLEISCHMAN: No objection.

(Plaintiff's Exhibit 209 for identification received in evidence.)

Q Did you ever receive a response to that letter?

A No, I did not. I did not get a written reply.

Q Did you get an oral reply?

A Just in conversation to the office of the B Branch.

Q What did they say?

A I can't remember the president's name in the B Branch, but he took me in his office and tell me, well, there are a lot of guys, about 500 on file, and he will put my application on file.

Q Was his name Mr. Enwright?

A Yes.

Q Did you make any further attempts to join the A Branch?

A Yes, I did.

Q What did you do?

Line 15

Pierre - direct

136

2 A When I did not get a written reply from the B
3 Branch, I decided to write another letter to the A Branch on
4 the 24th of November 1972.

5 Q Did you mail this to the A Branch?

6 A Yes, I did. I sent it registered.

7 Q Did you get a response to that letter?

8 A No, I did not get a letter at that time, and I wrote
9 another one.

10 Q I show you Plaintiff's Exhibit 210 for identifica-
11 tion and ask--

12 A That is it.

13 Q Is this the second letter you wrote?

14 A Yes.

15 MR. HARRIS: I offer this one in evidence.

16 MR. FLEISCHMAN: No objection.

17 THE COURT: It may be received.

18 (Plaintiff's Exhibit 210 for identification received
19 in evidence.)

20 Q Let me show you Plaintiff's Exhibit 211 for iden-
21 tification, Mr. Pierre, and ask you if you can identify this?

22 A Yes, I do.

23 Q What is it?

24 A This is the slip that I wrote. This is another
25 application here.

jb-10

Caraballo-direct

180

1 A A sprinkler system we are laying out.

2 Q How large a building is this?

3 A Eight floors.

4 Q Are you a member of Local 638?

5 A Yes; the B Branch.

6 Q How long have you been a member of the B Branch?

7 A Two years and about three months.

8 Q Are you interested in becoming a member of the
9 A Branch?

10 A Yes, I do.

11 Q Why would you like to become a member of the A
12 Branch?

13 A For job security.

14 Q Have you ever applied for membership in the A Branch?

15 A Yes; once.

16 Q When was that?

17 A That was in 1971.

18 Q How did you apply?

19 A I wrote a letter.

20 Q Who did you write it to?

21 A I wrote it to the Union, really, but not to any
22 person in particular, you know.

23 THE COURT: You wrote it to the Local?

24 THE WITNESS: Yes, the Local of 638.

1 jbw 11

Caraballo-direct

181

2 Q Did you receive any response to that letter?

3 A No, I did not.

4 Q Do you have any responsibilities at your present
5 job other than being a steamfitter?

6 A Yes. I do. I am the assistant foreman on the
7 job.

8 Q How long have you been in that position?

9 A About three months.

10 Q Could you describe for us what you do in that
11 position?

12 A Well, in that position, I assist the foreman in lay-
13 ing out the jobs and screening new men, if there is any,
14 and having the job progress as fast as we can.

15 Q You say you assist him in screening out new men;
16 how do you do that?

17 A Oh, well, there is no way really you can prove that
18 the man is a steamfitter unless you put him to work and in a
19 matter of an hour or so, according to what you give him,
20 you will know whether he is a steamfitter or if he knows what
21 he is all about.

22 Q What things do you look for on the job?

23 A Well, the way in which he performs his duty.

24 Q Could you give us some examples?

25 A Well, naturally, you give him something to do like

Ms

Kryjak - direct

222

1 A Yes.

2 Q How long have you been a member?

3 A 21 years.

4 Q Could you tell us how you first became a member of
5 Local 638?

6 A Well, I got in through my father-in-law.

7 Q Will you explain the actual procedure that you or your
8 father-in-law followed?

9 A Well, he asked me a few questions, where I went to
10 school, where I worked before--

11 THE COURT: This is your father-in-law?

12 THE WITNESS: Yes.

13 A He went up to the office and spoke to the men and I
14 waited a while and then I got my book.

15 THE COURT: How old were you at that time?

16 THE WITNESS: I believe 25.

17 THE COURT: What had you been doing?

18 THE WITNESS: Steamfitting.

19 THE COURT: For how long?

20 THE WITNESS: Approximately 24 years now.

21 THE COURT: No, at the time you joined the Union and
22 got your A card, what had you done before that?

23 THE WITNESS: About three years I had done that in
24 the Greenpoint Oil Works.

b7c

Kryjak - direct

223

BY MR. GLASSMAN:

Q What kind of work had you done at the Greenpoint Oil Works?

A Pipe fitting.

Q What is your father-in-law's name?

A Louis Schenbeck.

Q Was he ever a member of Local 638?

A Yes.

Q Is he now a member of Local 638?

A He is retired.

Q Was he a member of the A Branch?

A Yes.

Q Are there any other members of the family who are presently members of Local 638?

A Yes.

Q Who are they?

A My uncle and nephews.

THE COURT: How many nephews?

THE WITNESS: Two.

THE COURT: You say your brother-in-law also?

THE WITNESS: Right.

Q What are their names?

A John Schenbeck, William Schenbeck, Paul Schenbeck.

Q Are they members of the A Branch?

1 220

Kryjak -direct

232

2 their characteristics?

3 THE COURT: That is a complicated question. I don't
4 understand that one.

5 A No.

6 THE COURT: Your answer is no. You understand it.

7 THE WITNESS: I don't. The engineers usually
8 figure that out.

9 THE COURT: All right.

10 Q Are there any type of mathematical calculations that
11 your men have ever had to do?

12 THE COURT: Well, that is so broad. I suppose if you
13 have a 12 inch space you got to get a 12 inch piece of pipe.
14 You must do that at times.

15 THE WITNESS: A 12 inch piece of pipe wouldn't fit
16 the 12 inch space.

17 THE COURT: You have to figure it more carefully
18 than that.

19 THE WITNESS: Yes.

20 THE COURT: You have to do a little arithmetic from
21 time to time.

22 THE WITNESS: Yes.

23 Q When a job closes down, how do you usually find your
24 next employment?

25 A Through the employer.

one

Nablock - direct

255

Q So you did not go through the formal apprenticeship program run by the Joint Apprenticeship Committee, is that correct?

A I was beyond the age.

Q Do you have any relatives by blood or marriage who are either now or have once been members of Local 638?

A Yes.

Q Who are they?

A I have one brother surviving that is a member and I had another brother, deceased, who was a member.

Q Did you have any nephews?

A I have nephews.

Q That are members of Local 638?

A They are members of Local 638.

Q How many?

A I have two that are journeymen, one that is completing the apprenticeship course, my son, who has completed the apprenticeship course.

Q Where are you working at present?

A At present I am unemployed.

Q What was your last job?

A My last job was for Valden Associates, out of Seafood, New York.

Q When was that?

Zinnab

Gruber-direct

2 A Yes, I have.

3 Q Who?

4 A My father was a member. I have three sons in the
5 business.

6 Q I didn't hear you.

7 A Three sons in the business, and a nephew.

8 Q Where are you presently working?

9 A On 108th Street and First Avenue, East River.

10 Q How long have you been working there?

11 A About seven months to eight months.

12 Q Are you the foreman on that job?

13 A I am.

14 Q Prior to that job, where were you working?

15 A Seward Park and Grant Street.

16 Q Were you the foreman on that job?

17 A Yes, I was.

18 Q Were you on the Seward Park job the general
19 foreman or deputy foreman?

20 A Just the foreman in charge of the job.

21 Q How long were you the foreman on that job?

22 A I would say that job took seven months.

23 Q You were the foreman for the whole time?

24 A No. The job was just about completed and I left
25 to run this other job.

Gruteb

Gruter-direct

270

2 Q 5224 and 31.

3 A Right.

4 Q This is May 24, 1972 and May 31st?

5 A Yes.

6 Q Are you the Mr. F. Gruter referred to on there?

7 A Yes.

8 MR. HARRIS: I offer it in evidence.

9 MR. FLEISCHMAN: No objection.

10 (Plaintiffs' Exhibit 204 for identification
11 received in evidence.)

12 BY MR. HARRIS:

13 Q I would like you to look at this, Mr. Gruter,
14 this exhibit.

15 At that time, was that the Seward job at which you
16 were the foreman?

17 A Yes.

18 Q That indicates the men employed at that time on that
19 job?

20 A Right.

21 Q Who is Mr. F. Gruter.

22 A I am.

23 Q Who is Mr. R. Gruter?

24 A My son, Richard.

25 Q And Mr. K. Gruter?

1 9msb Gruter-direct 271

2 A Kenneth, my son.

3 Q And Mr. S. Gruter?

4 A My son.

5 Q Is there a J. Bush, Sr.?

6 A Yes.

7 Q Who is he?

8 A He was a worker.

9 Q Is there a J. Bush, Jr.?

10 A Yes. That was his son.

11 Q On any of the jobs on which you have been

12 foreman, have there been welders?

13 A Yes.

14 Q Were they qualified welders?

15 A I would say so.

16 Q How did you determine whether they were qualified?

17 A They would have a certificate of certification,

18 some of them.

19 Q If they had a certificate, did you give them any

20 further tests?

21 A Not on the job, no.

22 Q You assumed that a certified welder was qualified,

23 is that right?

24 A Right.

25 Q Let's take the steamfitters that worked for you.

bme

Campbell - direct

326

1 A Yes.

2 Q Is this a list of the men employed on your job as
3 of the week ending 5-31-72?

4 A Yes.

5 MR. HARRIS: I offer it in evidence.

6 (Pause.)

7 MR. FLEISCHMAN: No objection.

8 THE COURT: It will be received.

9 (Plaintiff's Exhibit 205 for identification received
10 in evidence.)

11 Q I would like you to have this in front of you to
12 refer to, Mr. Campbell.

13 The first name on that sheet is G. Campbell. Who is
14 that?

15 A Me.

16 Q There is also a M. Campbell, who is that?

17 A My father.

18 Q The third name down is E. Purcell. Who is E. Purcell?

19 A Steamfitter on the job.

20 Q Was he the shop steward on that job at that time?

21 A Yes.

22 Q There is a T. Purcell, who is that?

23 A Steamfitter on the job.

24 Q Is he related to E. Purcell?

Campbell - direct

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2 A Yes.

3 Q What is the relationship?

4 A Brothers.

5 Q Are they A men or B men?

6 A A men.

7 Q There is a W. Byron on that sheet?

8 A Yes.

9 Q Who is he?

10 A Steamfitter.

11 Q Did he hold any position other than just general
12 steamfitter?

13 A Duty foreman.

14 Q Is there an R. Byron on that job?

15 A Yes.

16 Q Who is R. Byron?

17 A Steamfitter on the job.

18 Q Is he related to W. Bryon?

19 A Yes, his son.

20 Q Is there an R. Geoghegan on the job?

21 A Yes.

22 Q Who is he?

23 A Steamfitter on the job.

24 Q Is he a member of the A Branch?

25 A Yes.

b7c

Campbell - direct

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Q At an earlier time on that job was there a M
Geoghegan working for you?

A Yes.

Q That is Marty Geoghegan?

A Yes.

Q Is he related to the Richard Geoghegan whose name
is on Plaintiff's Exhibit 205?

A Yes.

Q What is their relationship?

A I am not sure. I think they are cousins.

Q Do you also know an E. Geoghegan?

A Yes.

Q Who is he?

A A steamfitter on the job.

Q He worked on this job too, didn't he?

A Yes.

Q Isn't that Marty Geoghegan's father?

A Yes.

Q What about Walter Geoghegan, did he work on this
job?

A Yes.

Q Is that Eddie Geoghegan's brother?

A I think it is. I am not sure.

MR. HARRIS: No further questions.

342eb

Catapano-cross

MR. TEAGER: No questions.

CROSS-EXAMINATION

BY MR. FELISCHMAN:

Q Do you ever have any non-union member come and ask you for work?

A A few times.

Q What did you do?

A Referred them to the office of Burley Industries or the employer for whom I am working.

Q Was that the same practice you used in connection with "A" men or "B" men?

A Anybody that shows up to the job and asks for a job.

Q How much overtime do you do on your present job?

A The job I am on, for about a year and a half, I have worked approximately two days overtime.

The reason I worked overtime was we were working on Richwill pipe, and that pipe is underground and the last two months we had such rain that I had to complete it before the cold weather would prevent us from having it covered up.

Q The amount of overtime that you have put in on this job, is that the same amount of overtime for all the men?

18mmob

Rios-Ilmoct

360

types of valves, got valves, quick-opening valves.

Q What was your next job after you left Schlossberg?

A Well, during that, there was a strike and --

Q Where did you go when the strike was over?

A To different jobs, trying to get work. I went to 1199 Second Avenue and there the foreman took my name --

Q You attempted to get work at 1199 Second Avenue?

A Yes.

Q What were you told?

A I was told they didn't need anyone and to leave my name and phone number there and if they needed anyone, they would call me.

Then I went to 110th Street and Fifth Avenue, which is the same superintendent, Jack Egan, and there they said they didn't need anyone.

Then I went to 116th Street, First and Second, and I went there and spoke to the foreman and left my name and phone number and he was surprised that I had an "A" book and wasn't working.

From there, I went to Mount Sinai Hospital and spoke to the foreman there and I left again my name and phone number. They didn't need anyone there.

Then I went to the union and the union didn't have anything at the moment. I left my name, my phone

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Bios-direct

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number, and they wanted to know what type of work I did and I told them the work I did and type of book I had.

Q Specifically, you say you went to the union. What did you contact there?

A The receptionist.

Q This is at the union office?

A Yes.

Q Did you contact anyone else from the union?

A I left a message for Mr. Cummings.

Q Who is Mr. Cummings?

A The business agent at the job I was on at the Bronx, the Jacoby Residence Building. He was the business agent in that district. He never called, I didn't get no answer.

Then I went looking for work again and I went to the Twin Towers, on the West Side by the Highway, I don't remember the exact street, and I spoke to the foreman and he said he was in need of a journeyman and to leave my name and number, which I did, and I never got an answer.

Then I think from there, I went back to the union and I left again my name and phone number and a message for Mr. Cummings to get in touch with me, but he never called me.

Q The job at 1199 Second Avenue, did anyone ever

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call you about that?

A No.

Q The job at 116th Street, anyone ever call you about that?

A No.

Q The job at Mount Sinai, did anyone call you about that?

A No.

Q The job at Twin Towers, anyone call you about that?

A No.

Q Did you eventually get a job?

A Yes, eventually I got a job at Lincoln Hospital.

Page 1

Rios - direct

163

2 Q Who is the contractor on that site?

3 A Fred Clark.

4 Q Is Mr. Clark black or white?

5 A He is black.

6 Q How long were you unemployed after the strike ended?

7 A About a month and a half.

8 Q You say you are now working at this job at Lincoln
9 Hospital?

10 A Yes.

11 Q What kind of work are you doing there?

12 A I do steam fitting work there. I am in charge of
13 all the sprinkler work at that hospital.

14 Q Are you the foreman there?

15 A Deputy foreman.

16 Q What kind of work is involved in sprinkler work?

17 A Cutting and threading pipe. Well, in this case
18 they are fabricating the sprinkler outside and it is just
19 reading it off a print and it is like a puzzle that just
20 goes together. It is done on the outside.

21 Q Do you read blueprints?

22 A Yes.

23 Q During the time you were working as a fitter
24 other than as a foreman, were you called upon to read blue-
25 prints?

Lab

Clinton-direct

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Q The only other two apprentices were white?

A Yes.

Q Were they doing bull work?

A No.

Q What work were they doing?

A They were assigned to a gang.

Q What kind of work were they doing in their assignment to this gang?

A I would imagine installation.

THE COURT: Well, do you know? Did you see them, observe them?

THE WITNESS: I observed them with a gang but I don't know what they were doing.

Q On any of the jobs you have had since you have been apprentice, have you had any conflicts with white workers which you would attribute to race?

MR. FLEISCHMAN: I object.

THE COURT: I don't know what the question means. I will sustain the objection to the question as so stated.

Tell us about your working conditions.

THE WITNESS: First, at the powerhouse, it was all right, I met a lot of fitters that were interested in me learning.

I got to the Trade Center and I had a few

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Clinton-direct

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instances, I mean, a few guys, they were always constantly telling me, "What are you doing here? We are not used to have blacks here. You are lucky to be here."

There was no instruction, just ridicule. One instance, they was saying I was a token, that I was put there by some black organization, other than me taking a test.

It got a little heated and I told them to look around themselves, and by that afternoon, they had called Mr. Kerr down and said I was causing racial trouble, and Mr. Kerr said I should not let this happen again.

Q Who is Mr. Kerr?

A The head of the apprenticeship.

Q Did you ever think about quitting the apprenticeship program?

A Yes.

Q When was that?

MR. FLEISCHMAN: I object.

THE COURT: He can answer.

Q What was your reason for thinking about quitting?

THE COURT: What were the circumstances?

A I lost interest in coming to work. I didn't feel it was worth it because there was an atmosphere of hostility and I wasn't learning anything, I was on the bull gang.

rueb

Clinton-direct

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THE COURT: Because you were kept on the bull gang?

THE WITNESS: That's true partially, and then the fact that, you know, you are just not liked, and you can't learn or feel comfortable and being the first time in construction, you feel unsafe because of the hazards and I thought maybe this was not what I should be doing..

Q Did you actually quit?

A At one time, just before I went in the Service -- that is one of the reasons I went in the Service, to get away -- and I had fell behind in my union dues and I had to be reinstated and go back in.

Q You were reinstated when you returned from the Service?

A Right -- well, before I went in.

Q Before you went in, you were reinstated?

A Right.

Q In your apprenticeship program, have you had classroom training?

A Yes.

Q Could you describe that training for us?

A Basic sciences, blueprint reading, general construction knowledge of buildings, how they are constructed.

Khab

Courtney-direct

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THE COURT: I don't think it makes any difference.

MR. YEAGER: This one shows a higher average overtime than that one, your Honor (indicating).

THE COURT: I am just trying to simplify this.

(Plaintiffs' Exhibits 163 and 163-A received in evidence.)

MR. HARRIS: Your Honor, could we read the dates of the two into the record?

THE COURT: Sure.

MR. YEAGER: 163 is October 8, 1972 and 163-A is November 16, 1972.

BY MR. YEAGER:

Q Mr. Courtney, on the one that I showed you, which is Plaintiffs' Exhibit 163, was that the second of the studies that was prepared that you mentioned of the three?

A I couldn't be absolutely sure.

Q Could you tell me how the number in the fifth column is arrived at on this study (indicating)?

A We took the paid hours reported by the contractor on his quarterly report, total paid hours. We then developed or used from the same report, a number of hours worked.

We subtracted one from the other and came up with merely an arithmetic difference at that point. We then

2226

Courtney-direct

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subtracted the arithmetic difference from the hours worked and developed what we referred to in the programming as the straight time hours.

We then took the total number of straight time hours and divided it by the number of employees on a given report, and at that point said these were the average hours worked by the employees reported therein.

He then took those hours, of each of the employees, and divided it by the basic work week of 35 hours, and from there developed a representative number of weeks of work covered by the quarterly report.

When we got to that point, we took the number of weeks which we had developed and divided it into the arithmetic difference of the first two figures and said that is the overtime hours per week for that report.

We took the average overtime hours as developed and again divided it by the number of employees and generated a figure which we referred to as the average overtime hours per week per employee for that specific period.

Q Showing you Plaintiffs' Exhibit for identification No. 163-A -- I'm sorry, Plaintiffs' Exhibit in evidence 163-A, was the same procedure followed in preparing that study and, if not, could you describe the difference for me, please?

rueb

Courtney-direct

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first quarter of 1967. The next column is the paid hours --

MR. SHAW: Excuse me. Do you have a copy of this for the Judge to follow?

MR. HARRIS: Which number are we on?

MR. YEAGER: 163.

(Pause)

MR. YEAGER: I think there has been a mistake here, your Honor.

I don't believe that the October 5, 1972 study was marked in evidence.

THE COURT: I thought that was 163-B.

MR. YEAGER: That's correct.

THE COURT: Mark it, then.

(Plaintiffs' Exhibit 163-B received in evidence.)

MR. YEAGER: October 8th is the one we are doing now, your Honor.

THE COURT: Well, that is 163?

MR. HARRIS: Right.

BY MR. YEAGER:

Q Would you describe the content of the four columns, please?

A Repeating again, the first column indicates the calendar quarter of the year and the year. For example, 1-67 is the first quarter of the year 1967.

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Courtney-direct

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2 The second figure represents the total paid
3 hours reported by all contractors reporting that period
4 from their quarterly report.

5 The next column is the hours worked, which
6 have been developed from the same report covering the same
7 quarter.

8 THE COURT: You say total paid hours and the next
9 one is total hours worked?

10 THE WITNESS: Yes.

11 THE COURT: What is the difference?

12 THE WITNESS: Two of our fringe benefits are
13 based on cents per hour. One is based on a cents per hour
14 for hours actually paid and the other fund is based on
15 hours physically worked, on a cents-per-hour basis.

16 THE COURT: You get the paid hours from the
17 contractor; how do you get the work hours?

18 THE WITNESS: From the report.

19 A The next column is the number of employees
20 reported in that particular calendar quarter. That is the
21 four columns you asked me for, counsel?

22 Q Yes. Speaking of the fourth column, the number
23 of employees who worked, does that represent individual
24 discrete steamfitters?

25 THE COURT: What do you mean by discrete?

1 A-12B

Courtesy-direct

171

2 MR. FRAGER: I will rephrase that.

3 Q Would there be any duplication of steamfitters
4 in that column?

5 A Possibly.

6 Q To what would that be attributed?

7 A The man was employed by two different contractors
8 within the same quarter.

9 Q I believe you mentioned that one of the funds you
10 have over which you exercise supervision is the unemployment
11 fund?

12 A The security benefit fund but it does generate an
13 unemployment benefit, yes.

14 Q Do you maintain records of unemployment by
15 steamfitters in order to administer that fund?

16 A Yes, we do.

17 Q I am showing you Plaintiffs' Exhibit 164, which
18 is entitled, "Unemployment Analysis, April to October,"
19 Plaintiffs' Exhibit 165, which is also entitled, "Unemployment
20 Analysis, April to October," and I am asking you if you are
21 familiar with those.

22 A Yes.

23 Q Could you tell me what they are, please?

24 A These represent the number of benefit weeks paid
25 to the steamfitter who applies to the fund office for

pme 2

Courtney - cross

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hours worked outside the normal contract working hours?

A I think I would have to answer this way: The study we are using is based on the reports received in the Fund office which are paid hours, actually compensated hours, and worked hours, and that developed the basis of the whole study.

Q So that any clause by which premium pay is given rather than straight time pay would be reflected there and not only excess hours in excess of seven during the standard working day, is that correct?

A Basically correct.

Q Concerning the unemployment study, which is 164 and 165, are you familiar with these?

A Yes, I am familiar with them.

Q During the time that you have been with the steamfitters industry fund, from approximately 1963 on, are you aware of any increase in the amount of unemployment?

A We did have some, I believe, about mid-year in 1967--either six or seven--and it ran for about three calendar quarters. It was a construction cycle that occurred on that point, from our records.

Q Were there any other construction cycles you were aware of? Were there any other construction cycles you experienced by reports coming into your office?

A I can't answer anything outside of the steamfitting

1 bne 3

Courtney - cross

433

2 industry, counsel.

3 Q Are there always or are there usually people that
4 are unemployed in the industry?

5 A Yes, I would say we consistently pay unemployment
6 benefits throughout the year.

7 Q This is every year?

8 A We have paid them every year since I have been in
9 it.

10 Q Since 1963 there have always been steamfitters out of
11 work and getting benefits?

12 A That's correct.

13 Q In terms of the benefits, would you say that every
14 steamfitter that is unemployed gets benefits?

15 A No.

16 Q So that there could be substantial numbers or cer-
17 tainly a--

18 MR. YAEGER: Objection.

19 THE COURT: Okay.

20 MR. BROOK: Withdrawn.

21 Q So this report would not necessarily reflect--

22 MR. YAEGER: Objection.

23 THE COURT: Yes, I sustain an objection to that.

24 Q What must a steamfitter do, what requirements are
25 there--withdrawn.

bmc 4

Courtney - cross

434

1 This study is based upon--is this study based upon
2 security benefit payments which are given?

3 A That's correct.

4 Q What must a steamfitter do in order to receive
5 security benefits?

6 THE COURT: I thought Mr. Courtney was testifying
7 here because he handles these funds and on the basis of the
8 figures, and I think he has indicated to us he relies on the
9 reports he gets--isn't that right?

10 A Not in this case, your Honor.

11 THE COURT: What do you do in this case?

12 THE WITNESS: For a man to be paid an unemployment
13 benefit from the security benefit fund, he must apply to the
14 fund office and then substantiate the fact that he is receiving
15 an unemployment benefit from New York State, basically.

16 When we have evidence he is receiving that benefit
17 the supplemental is paid and matches it.

18 Q If a man is not eligible for New York State
19 Unemployment Benefits, can he get an unemployment benefit from
20 your office?

21 A Not of this nature, no.

22 Q So an individual like that would not be reflected
23 in the unemployment study, is that correct?

24 A That's correct.

One 5

Courtney - cross

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2 Q Is there a certain limit to the number of benefits
3 a man can receive from New York State?

4 MR. YAEGER: Is there a limit to the number of
5 benefits? I don't understand that.

6 THE COURT: As I understand that, he receives
7 unemployment from the State for a period of weeks?

8 THE WITNESS: That's correct.

9 Q When those benefits stop being paid by New York State:
10 and the man no longer has a check or a certificate from New
11 York State, can that man receive unemployment benefits from
12 your office?

13 A Not of this nature, no.

14 THE COURT: Yours is purely supplementary to the
15 New York State insurance?

16 THE WITNESS: That's correct.

17 Q If a man gets unemployment benefits from the state
18 and gets unemployment benefits from your office, is it possible
19 that benefits would stop because his account runs out?

20 A Yes, entirely possible.

21 Q These accounts, are these individual accounts or
22 pool accounts?

23 A It is legally a pool fund, but the accounts are main-
24 tained on an individual basis.

25 Q So that can a man withdraw or get benefits above and

1 Dme 5 Courtney - cross 486

2 beyond what he has in his individual account?

3 A He cannot.

4 Q So if a man was unemployed and had no money left in
5 his security benefit fund, he would not be listed on this study
6 as being unemployed, is that correct?

7 A That's correct.

8 THE COURT: How does the credit per employee develop,
9 who contributes the money?

10 THE WITNESS: The employing contractor.

11 MR. BROOK: No further questions.

12 CROSS EXAMINATION

13 BY MR. SHAW:

xx 14 Q Mr. Courtney, I ask you to refer to Exhibit 163, if
15 you have it in front of you, and also to Exhibit 168.

16 A I have neither.

17 THE COURT: Could you produce the exhibits?

18 MR. HARRIS: Mr. Brook was 163 and 164.

19 MR. SHAW: No, I want the overtime study, 163.

20 (Pause.)

21 Q This is the one. (Hanging)

22 MR. SHAW: Do you also have 168?

23 MR. YAEGER: Yes. (Hanging)

24 Q I refer you to the summary sheet, Mr. Courtney. The
25 third column in that summary sheet are total hours worked durin

One 7

Courtney - cross

437

each of the quarters referred to, is that correct?

A That's correct.

Q At my request, during the break, did you add up the total hours worked in the year 1971?

A I did.

Q What is the total?

A 7,599,160.

Q That is total hours worked in the steamfitting industry that is involved in this case, is that correct?

A As reported to us, correct.

Q Did I also ask you during the break to compute the number of hours that a man would work if he worked full time, that is, seven hours a day, for 50 weeks, without overtime?

A You did.

Q What is the total man year in hours then?

A 1750 hours.

Q Did I also then ask you to compute how many man years were worked in the industry in 1971, by dividing 1750 into the 7 million approximately 600,000 figure.

A You did.

Q What is the total number of man years worked in the industry in 1971?

A 4,342.

Q I refer you to Exhibit 168, the second page of which

1 bme 8 Courtney - cross 493
2 is a breakdown--the second page is an analysis of hours paid for
3 the year 1971.

4 A That's correct.

5 Q And it shows in the second column, under construc-
6 tion trades branch, the number of A book men who worked in
7 the various gradations of hours, is that correct?

8 A That's correct.

9 Q Did I request you during the break to add up the
10 number of A book men who worked more than 1600 hours in the
11 year 1971?

12 A You did.

13 Q What is the total of men who worked as much as 1600
14 hours or more who were A men during 1971?

15 A 2,619.

16 Q As compared with the total man hours of work of
17 4,342?

18 A That's correct.

19 Q With respect to the overtime averages reflected in
20 Exhibit 163, in the four quarters--the three last quarters of
21 1971, you show a total number of employees reported in each
22 of those three quarters as over 5800, is that correct?

23 A What year?

24 Q In the year 1971.

25 A Three of those were over 5800, correct.

1 Page 9

Courtney - cross

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2 Q In point of fact, the total men who were shown to
3 have worked at all in the year 1971 on Exhibit 168 is 5600.

4 A That's correct.

5 Q As a matter of fact, the men who worked more than 16
6 hours are far less than 5600, are they not?

7 A That's correct.

8 Q I think it was brought out there was some duplica-
9 tion in your figure of number of employees reported because of
10 the fact, as you explained, many of these employees worked for
11 more than one employer in a given quarter, is that correct?

12 A That's correct.

13 Q And hence they are duplicated. In fact, therefore,
14 is not your average overtime worked much too low because you
15 have much too high a number of employees?

16 A Possible.

17 Q Well, it certain is too high, is it not, because the
18 total of men who worked during the entire year at any time
19 during the entire year was 5600 and so it can't be higher
20 than that?

21 A That's correct.

22 Q When you have 5800 or more, it has to be at a mini-
23 mum excessive by 200 odd men?

24 A Correct.

25 Q With respect to this unemployment, Mr. Brook asked

bwa 10

Courtney - cross

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you if there were not men who were unemployed throughout your period of tenure in your present office. I am referring now to Exhibit 168, which is the year 1971 for hours paid. You reflect there, for example, there were 503 men during 1971 who worked less than 250 hours, is that correct?

A That's correct.

Q Under the other, the permit men, all of those men who worked less than 250 hours, who were permit men, would have paid into the security benefit fund, would they not?

A They would.

Q If those men became unemployed, they would take their money out, would they not, or be eligible to do so?

A They would be eligible to do so.

Q You are not saying there were A book men who were unemployed throughout your tenure, are you?

A No.

Q Is there any analysis of whether there were ever any A book men unemployed?

A We don't keep such records.

MR. SHAW: No further questions.

REDIRECT EXAMINATION

BY MR. YAEGER:

Q Mr. Courtney, referring to Plaintiff's Exhibit 163 and 163A and 163B, that is, the overtime studies, does the

bme 12

Courtney - redirect

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calculations done to assure those hours only appeared once?

A I really couldn't answer without checking.

Q Well, do overtime hours appear twice in this study?

A By individual?

Yes, I said that before, I think.

Q Let me be more specific--

THE COURT: When a man changes jobs, it appears as two men?

MR. YAEGER: I am sorry, your Honor.

Q I am saying the number with which you calculated the number of hours overtime, or premium hours, was the number included within it-- double the hours that were worked overtime-- is that correct?

A Not in this report. We adjusted for that, if this is the one we are using. (Indicating). I think when I explained the formula, that is what we did--

Q Let us look at the first column. The first column is pay hours?

A Correct.

Q Does that include double the number of overtime hours?

A Certainly.

Q Did your study correct for that so that the overtime hours do not appear double by the time you figure the average

Page 13

Courtney - redirect

493

overtime per man?

A Hopefully the program was supposed to do that. We had no way of checking whether it actually did.

Q If you subtract the third column from the first column, what number do you get, what does that number represent?

A That would be, in this particular instance, premium overtime.

Q And those are just counted once at that time?

A That's right.

MR. YAEGER: No further questions.

THE COURT: Any other questions?

MR. BROOK: Yes, your Honor.

RE-CROSS EXAMINATION

BY MR. BROOK:

Q Mr. Courtney, this is a copy of Exhibit 168--oh, I believe you have it there.

A Yes.

Q Could you turn to the second page of that, please, and look at the left-hand column where it indicates the number of hours and would you just--

MR. YAEGER: Would you refer to the subject number?

MR. BROOK: 163.

Q Could you turn to the second column and just quickly

one 14

Courtney - recross

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add up the bottom four figures?

A Second column?

MR. SHAW: 1970 or 1971?

MR. BROOK: 1971.

A The last four?

Q Yes.

MR. YALGER: Your Honor, it seems to me that would speak for itself in this case.

THE COURT: If he can add up the last four figures, he will add them up.

Q Will you tell us what that is?

A 2,433.

Q Do you know the approximate membership of the construction branch of 638?

A Approximately?

Q Yes.

A No, I don't think I can give you that figure.

Q Refer to page 2 of the stipulation of facts in the pretrial order--for 1971 there are listed 3,850 members.

Does that seem about right to you?

A I would have to say yes.

Q So that the total number of people who worked a full, hypothetical 35-hour week, or 1750 hours, was approximately how many again?

bmc 15

Courtney - recross

495

2 A 2,433.

3 Q Out of a membership of 3850. Okay.

4 Secondly, Mr. Courtney, turning again to Exhibit 168,
5 where a man worked 200 to 300 hours, for example, on the
6 second column going across, assuming he had worked that amount
7 the previous year, about how many payments of security
8 benefits would he have?

9 A You used the figure 300, counsel? He would generate
10 \$150 a year.

11 Q And approximately how much are the security bene-
12 fit payments?

13 A Which ones, supplemental unemployment?

14 Q Yes.

15 A \$75 a week, at the current time.

16 Q If a man worked 250 hours in 1970, he would have
17 two weeks worth of benefits credited to his account and
18 if he worked 250 hours only in 1971, after two weeks he would
19 no longer have any money in his account, is that correct?

20 A That's correct.

21 Q So that unemployment by a man in this category would
22 not be reflected or not shown in your unemployment study, is
23 that correct?

24 A That's correct.

25 MR. BROOK: No further questions.

GWL2

Barrett-direct

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problems I see. Some of these tests, your Honor, are all visual and it seems pointless to describe them in oral testimony because they will be in evidence.

Q Dr. Barrett, let me show you, if I may, Plaintiff's Exhibits 174 through 193, which were the technical reports, manuals and tests provided to you by the companies when you wrote for the tests. Is that correct?

A Yes.

Q Could you explain for us what a technical report or manual is?

A A manual describes the purpose of the test, the way it was developed, the kind of items that it contains, it gives instructions for administering and scoring the test, it gives data on reliability, generally they show the relationship between this test and similar tests, they show validity of the test, sometimes for predicting school grades and sometimes for predicting on the job performance.

Q Have you obtained the manuals and technical reports for some of the tests that were listed in the answers to interrogatories we have been discussing here?

A Yes.

Q Could you tell us for which ones you maintained the manuals?

GW13

Barratt-direct

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1 A The Employee Aptitude Survey, School and College
2 Ability Test, the Multiple Aptitude Tests -- excuse me --
3 that is the guide -- no, that is the test itself; Technical
4 Report on the Multiple Aptitude Tests; Guide to Inter-
5 pretation of Multiple Aptitude Test Scores; Manual for
6 the Survey of Mechanical Insight; the Hannon-Nelson Tests
7 of Mechanical Ability, Bennett Mechanical Comprehension
8 Test; the Revised Minnesota Paper Form Board Test;
9 Directions for Administration and Scoring of Differential
10 Aptitude Tests.
11

12 That's it.
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1 one

Barrett - direct

548

2 Q Dr. Barrett, have you examined those manuals, have
3 you read through them?

4 A Yes, I have.

5 Q Is there any evidence in those manuals of the vali-
6 dity of these tests for the job of apprentice steamfitter?

7 A Well, practically, there is one validity coefficient
8 cited for apprentices in plumbing, in the Minnesota--

9 Q In your opinion is that sufficient to convince you
10 of the validity of these test batteries?

11 Is it sufficient to convince you of the validity of
12 the specific test to which that specific study refers?

13 MR. SHAW: I object to the form of the question,
14 your Honor.

15 THE COURT: I will let him answer that.

16 A It doesn't convince me, largely because the informa-
17 tion provided is quite minimal. It is a very small statement
18 and we don't know anything about the nature of the job, the
19 criteria, and so forth, that one should know about.

20 Q Dr. Barrett, I am now showing you stipulation of
21 fact number 24, which is in the pretrial order in this case,
22 which consists of some introductory material and a chart of
23 two pages.

24 Have you seen that before?

25 A Yes, I have.

1 one Barrett - direct 549

2 Q Could you tell me what that is?

3 A This is a listing by various dates of the tests
4 that were given, the passing score, the number of white
5 applicants taking the test, the percent and number of whites
6 who passed the test, and the same information for black
7 candidates and for Spanish surnamed candidates.

8 Q Did you calculate the statistical significance of
9 the relative pass or fail rates of blacks, Spanished surnamed
10 persons and whites for the tests for each year?

11 A I computed the difference between the whites and
12 blacks but did not include the Spanish surnamed because there
13 were so few.

14 Q You did compute it for the blacks?

15 A Yes.

16 Q What did you conclude on the basis of that calcu-
17 lation?

18 A I did the calculations year by year and also a
19 calculation for the total. On the basis of the year by year
20 comparisons, four out of the six showed a significant differer-
21 between the blacks and whites in the passing rate and the
22 white passing rate was always higher than the black passing
23 rate.

24 I also did this for the total group, which included
25 1,177 whites and 473 blacks, and the level of significance of

1 bme Barrett - direct 550
2 difference between the two was so high that I could not look
3 it up on my existing tables, but I would estimate such a
4 difference would be found by chance about one time in a million

5 Q When you say you computed the statistical signifi-
6 cance, is that referring to a specific formula, such as the
7 one you referred to earlier today?

8 A Yes, it is. It is a standard formula taken from
9 one of the standard statistical texts.

10 Q As a professional psychologist, when you make that
11 kind of statistical computation and come up with those results
12 what do you conclude?

13 A The only thing I could conclude is that the whites'
14 passing rate is greater than the passing rate of the blacks.

15 Q When you compute the significance of the difference
16 between those two rates, does that indicate to you the tests
17 are discriminatory?

18 A Yes.

19 MR. FLEISCHMAN: I object.

20 THE COURT: Why? Why do you say that?

21 THE WITNESS: It only has to do with discrimination
22 and they discriminate in the sense--

23 THE COURT: On the passing rate?

24 THE WITNESS: Yes. The qualifying word whether it
25 is fair or unfair discrimination was not part of the question,

1 bme

Barrett - direct

551

2 so I didn't answer that.

3 THE COURT: So far, that is not discrimination,
4 is it, that there was a higher passing rate--

5 THE WITNESS: That was a discrimination as to the
6 figures. The question, as I understand it, is whether this
7 is fair or unfair and that part I am not--

8 THE COURT: That is what I am interested in. All
9 that means to me so far is that the examination is given to
10 some whites and some blacks and the passing rate is higher
11 on the whites.

12 THE WITNESS: Yes.

13 Q When you take the different passing rates and plug
14 them into your statistical formula, do you reach conclusions
15 concerning the significance of the relative pass-fail rates?

16 MR. FLEISCHMAN: I object. No foundation has been
17 laid.

18 THE COURT: I think that is right. I think you are
19 jumping the gun. I would rather have the doctor start from
20 there. Where did you go from there, doctor? You found these
21 were significantly higher on the whites--

22 THE WITNESS: The next question is whether there is
23 a business necessary for this difference and I have no data that
24 bears on it and can't draw a conclusion.

25 Q What is meant by statistical significance?

1 bme Barratt - direct 552

2 A Simply an indication that the difference observed
3 is almost certainly to be a reflection of the true differences
4 between blacks and whites in their passing rates of these
5 tests. That is all it says. We would up with 40 per cent of
6 the whites passing and 9 per cent of the blacks passing and the
7 difference is no accident in favor of the Whites. Something is
8 operating that is causing it.

9 Q When you said that one of calculations you made was
10 "off the charts" what did that mean in terms of the analysis?

11 A I just have a table which happens to go up to a
12 number of four standard deviations and the figure I obtained
13 was 6.26 standard deviations and they stopped the tables
14 before they got up that high because there was no point in
15 going beyond four.

16 Q What does that mean?

17 A Just that it is almost perfectly certain that the
18 pass rate of whites is greater than the pass rate of blacks.

19 Q And that that is significant?

20 A That is what it means, yes.

21 THE COURT: I think you are saying as a result of
22 these tests and the results that appear from these tests that
23 that is no accident? In other words, from that you draw an
24 inference, or presumption, if you will, that the tests them-
25 selves must be geared to produce this type of result? Is that

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Barrett - direct

553

1 right?

3 THE WITNESS: Well, I didn't mean it in that way,
4 that someone was intentionally doing it. I am just saying
5 this is the effect. This is not an accident that results
6 from our happening to have selected in this 1177 whites a
7 number of good test takers, and just by chance the 473 blacks
8 getting poor test takers. I didn't mean there was an inten-
9 tion on the part of the people who built the test to dis-
10 criminate.

11 Q Would you be able to predict what would happen if
12 the same tests were given again to a similarly chosen group?

13 A Probably get very similar results.

14 Q Dr. Barrett, I am showing you a copy of Plaintiff's
15 Exhibit for identification number 185, the first page of which
16 is a letter purporting to be from one Beatrice De Vorak, to
17 you, and enclosing a study numbered S-61-R, which is the second
18 part of the Plaintiff's Exhibit 185 for identification.

19 I show you those two documents, are you familiar
20 with those?

21 A Yes.

22 Q Would you tell me how you came to be familiar with
23 them?

24 A I wrote to Dr. De Vorak at Mr. Yaeger's request to
25 find out about this test S-61-R and she wrote back a letter
and enclosed a copy of a study that was done on this test,

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Barrett - direct

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2 which is entitled "Aptitude Test Battery for Pipefitter and
3 Plumber."

4 Q Are you familiar with the GATB?

5 A Yes.

6 Q What is the relationship between the GATB and this
7 report S-61-R?

8 A The tests used in that report are selected from the
9 GATB as being the most relevant for this kind of a job.

10 MR. YAEGER: I offer in evidence Plaintiff's
11 Exhibit for identification 185.

12 MR. FLEISCHMAN: No objection. Pardon me, your
13 Honor, we have no objection to the document going into evi-
14 dence, but we do not have a copy of the letter in transmittal.
15 We have the document itself but no copy of the letter.

16 THE COURT: I will see that you have copies.

17 MR. YAEGER: I prepared copies of this document
18 for everyone, your Honor.

19 THE COURT: All right, the exhibit will be received
20 (Plaintiff's Exhibit 185 for identification re-
21 ceived in evidence.)

22 Q Could you describe for us what the document numbers
23 S-61-R is?

24 A It is a report on two studies of the validity of th
25 tests, numerical ability, spacial ability, clerical perception

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Barrett - direct

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and manual dexterity, for the job of plumber and pipe fitter. The study was conducted about 20 years ago, I think 1953 or 1954, and this particular document was prepared and distributed in June 1970, presumably from existing files of the Labor Department.

It is a study of 322 male workers apprenticed as plumbers and pipe fitters in Texas. The design was a concurrent design, that is, the people were tested and given the ratings after they had been employed presumably all at about the same time. The validity coefficients are based on a criterion which is a combination of job performance and school achievement, and it says that the rules and regulations of the state and area committees require the employers and the schools to furnish monthly ratings of the apprentices for review at each meeting, and these were the ratings that were used.

They found a correlation coefficient of .30, which for a group this size is significant.

To put it in other terms, what they did was to divide the workers into the top two thirds and bottom third, which is what one would expect without a test and with the tests instead of having 67 per cent good workers, they would have had 77 per cent good workers and conversely instead of 33 per cent poor workers they would have only 23 per cent poor

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Barrett - direct

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workers.

The study was replicated with another group and they came up with essentially the same results.

Q Could you tell me the difference, if any, between the two groups?

A The second group was 89 male journeymen employed as plumbers and pipe fitters. It again was a concurrent test, given to those people who were on the job, and the correlation coefficient was .25 rather than .30.

Q The test on which this study was conducted, referring to the test on which this study was conducted, does this study convince you in your capacity as a professional psychologist of the validity of the test to which it refers for use in New York State at the present time to select apprentice steamfitters?

A No, it doesn't.

Q Could you tell me why?

A For one thing, it was done 20 years ago in another place and I don't know what the jobs are in Texas as compared to 20 years ago--as compared to the current jobs in New York State. There is no information on the inclusion of any minority group members in this study and of course there is no separation of the results for minorities and non-minority employees.

1 kme Barrett - direct 557

2 The whole study is rather limited in the way it is
3 reported. We don't know anything about the reliability of
4 the supervisory ratings, what kinds of instructions the super-
5 visors were given to do their ratings. We don't know how they
6 arrived at certain recommended minimum acceptable scores and
7 the GATB. It just gives the recommendations without stating
8 there is any indication that this is the point below which we
9 can expect a large number of unsatisfactory apprentices.

10 So, it doesn't say much.

11 Q Dr. Barrett, in your earlier testimony, this morn-
12 ing, you mentioned that selection devices as a whole should
13 be subjected to criterion related validity studies.

14 A Correct.

15 Q What are some of the things you would include
16 among the selection advices that you would subject to this
17 type of study?

18 A Interview, any use made of the academic record, and
19 work history of the individual. If they use any measures, say,
20 of a medical nature about strength or agility, and anything
21 that enters into the decision can be validated.

22 Q Would that include a high school education require-
23 ment?

24 A Yes.

25 Q An arrest record requirement?

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Williams - direct

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2 Navies, overseas, under water and in the States.

3 Q What kind of construction are you talking about?

4 A Putting up buildings, putting in air fields and
5 doing under water construction.

6 Q What kind of buildings do you put up?

7 A Administration buildings, power plants, shops,
8 barracks and housing for dependents overseas.

9 Q What is our rating, sir?

10 A I am a senior chief utilities man.

11 Q What is a senior chief utility man, what does that
12 mean?13 A It is a specialist in utilities which includes
14 electrical, plumbing, pipefitting, boilers, water treatment
15 and sanitation.

16 Q What are your present duties?

17 A I am the senior chief in charge of the utilities
18 man school in Davisville, Rhode Island.

19 Q What is the purpose of that school?

20 A To train the young man that comes into the service
21 from high school or the drop outs that is in the street that
22 comes in the service in the utilities man rating.23 Q Are these people with background in the construc-
24 tion industry?

25 A No.

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Williams - direct

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Q What kind of training do they receive when they come to you school?

A They get training in pipefitting, plumbing, boiler operation, water treatment, sanitation, refrigeration and air conditioning.

Q Is this a classroom course that you give?

A It is both. It is classroom and practical. For every hour classroom they get, they get two hours practice.

Q This is done at the facility school at Davisville?

A Yes, it is.

Q What is the length of the program?

A The school length, total length is 14 weeks.

Q At the end of 14 weeks, does the person who has been through the school have a rating?

A He comes out as a designated utilities man.

Q What happens to him then?

A He goes up what we call a naval construction battalion that does the construction for the Navy and he goes out and assigned to a company and a crew working in the skill he had learned in the school.

Q Would this be on a construction job?

A Yes, it will be.

Q Is there any program for giving him further training while he is on this construction job?

SOUTHERN DISTRICT COURT REPORTERS

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Williams - direct

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1 A Yes, it is. Upon leaving the school he is assigned
2 to a crew in the battalion. By being assigned to the crew,
3 he gets additional training, what we call on the job train-
4 ing. He is assigned to a petty officer which is the crew
5 leader working for the petty officer doing the assigned jobs
6 and getting additional training in this particular trade he
7 is working at under the leadership and guidance of the petty
8 officer.
9

10 THE COURT: How big is the school?

11 THE WITNESS: How big, sir?

12 THE COURT: How many people?

13 THE WITNESS: In the utilities man school at
14 Davisville, there are 51 students.

15 THE COURT: Is that about the usual figure during
16 the time you have been in the Navy?

17 THE WITNESS: It is a little low rate now.

18 THE COURT: How many of them obtain this desig-
19 nated rating?

20 THE WITNESS: All men that graduate.

21 THE COURT: What percentage graduate?

22 THE WITNESS: About 98 per cent graduate.

23 THE COURT: Thank you.

24 BY MR. HARRIS:

25 Q Chief Williams, are there other schools at Davis-

1/17 3-2a
PM

Williams-direct

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VOIR DIRE EXAMINATION

BY MR. SHAW:

Q Chief, who prepared this document?

A Who made the outline or who typed that?

Q Who prepared the outline? Is this taken from something that is printed?

A It is taken from the book right there.

MR. SHAW: May I see the book?

MR. HARRIS: I will offer the book in evidence. Perhaps that will be easier. This is the table of contents from the book.

THE COURT: Show him the book.

MR. SHAW: Are you going to offer the book in evidence instead of the table of contents?

MR. HARRIS: I will offer both of them.

MR. SHAW: I have no objection to the book.

THE COURT: I will take them both and he can make copies of the table of contents for you.

(Plaintiffs' Exhibits 217 and 218 received in evidence.)

DIRECT EXAMINATION (Continued)

BY MR. HARRIS:

Q Chief Williams, have you been on any construction jobs in the City of New York and observed the work of

Rehab

Williams-direct

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1 steamfitters?

2 A Yes. I went to the one at Lincoln Medical
3 Center here in New York City for new construction.

4 THE COURT: When was that?

5 THE WITNESS: Yesterday.

6 Q Is that a hospital?

7 A Medical center.

8 Q Were there steamfitters working on that job?

9 A Yes, sir, there were.

10 Q What did you observe them doing?

11 A I observed them putting in a sprinkler system
12 which included the branch runs, the risers, the mains and
13 the horizontal lines and also the T's for the heads of
14 the sprinkler heads and putting the holes in the deck to
15 run their sleeve through to run the risers from deck to deck,
16 from floor to floor.

17 Q About how many steamfitters did you observe working
18 on that job?

19 A I would say -- there were two different crews.
20 One crew I directly observed was about ten men.

21 Q And the other crew?

22 A The other crew, I observed the work they had put
23 in but for the number of men that had put the work in, I
24 don't know.

SOUTHERN DISTRICT COURT REPORTERS

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Williams-direct

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Q Have you observed any buildings that were completed where you could observe the work that steamfitters had previously done?

A Yes. I saw two buildings, an old building and a new building.

The old building was the court building and the new building was the Federal building across the street.

THE COURT: When did you see them?

THE WITNESS: Today.

Q What did you observe, what kinds of areas of the buildings did you observe?

A I observed the pipe room for the steam system, the piping for the air conditioning system and the piping for the water and also observed the pipe, the steam coming in from the New York Con Edison system at a high pressure reduced down to a low pressure going through your modulating, or PRV, pressure reducing valve to your pressure for the buildings and also the condensate coming back from the return as it goes through the system.

Q Did you observe the air conditioning system?

A Yes. I observed the 300-ton unit they have over there, a centrifugal unit with the Johnson controls and the high pressure centrifugal pumps and your air handling units that go along with it.

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Williams-direct

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Q This is the building across the street?

A Yes.

THE COURT: You didn't observe any way to turn off the heat in this building, did you? I don't think it exists.

THE WITNESS: It is kind of warm in here.

Q Did you observe any sprinkler system?

A Yes. I observed the sprinkler system they had in existence over there.

Q Did you observe the equipment that was used in these systems?

A They had the pumps for force main. They had risers coming off and your branches and they also had your cooling effect to keep the heads from reaching a certain temperature and popping off.

Q Were you familiar with this kind of equipment from your experience in the Navy?

A Yes, I am.

Q Did you use the same kind of equipment in construction in the Navy?

A Basically the same idea they have here, right here and at the Lincoln Medical Center is exactly what we do in the Navy.

Q In respect to the man you saw performing steam-fitting work yesterday at the Lincoln Hospital, what level

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Williams-direct

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of training in the Seabees would be required in your view
for a man to be experienced enough to perform that kind of
work?

A The workers, you are talking about?

Q Yes.

MR. FLEISCHMAN: I didn't hear that.

THE COURT: He wants to know what level of
training a Seabee would have to have to perform the kind of
work he observed being done in the hospital, Lincoln
Hospital, I take it, yesterday.

MR. FLEISCHMAN: Is that the sprinkler work?

THE COURT: Yes.

A What I saw basically was screw pipe, putting
fittings on, measuring pipe, cutting pipe and hanging the
pipe in the overhead.

I would say a man right out of my A school
working with another man that has been on the job can do it.
An A school graduate.

THE COURT: You say an A school graduate
working with another man?

THE WITNESS: That had experience on the job could
do what is being performed.

THE COURT: Would the other man be as experienced
or more experienced or less experienced?

1 rkeb

Williams-direct

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2 THE WITNESS: More experienced. I would say
3 six months on the job.

4 THE COURT: In other words, you think a
5 graduate of the A School could be a partner of a man to,
6 say, an A man in the union that performed that kind of
7 work you saw being performed at Lincoln Hospital?

8 THE WITNESS: Yes.

9 BY MR. HARRIS:

10 Q How much practical experience after graduating
11 from the A School would be required in your view before
12 the man could be performing as the partner would? In
13 other words, as an experienced A man.

14 A Six months on the job.

15 Q Is your answer the same with respect to the
16 type of work that was being performed by the other crew at
17 the Lincoln Hospital?

18 MR. FLEISCHMAN: I don't think he testified that
19 he saw other crews working, other than sprinkler crews.

20 THE COURT: Did you, Chief?

21 THE WITNESS: I saw the work that --

22 THE COURT: Had been done?

23 THE WITNESS: Right.

24 THE COURT: You only saw the sprinkler crew
25 working?

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Shofman-direct

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contractors?

A If the representation on the site was inadequate, we put pressure on the contractor to hire black and Puerto Rican workers.

Q What kind of pressure?

A We would stop payments and if we had to, we would threaten to disqualify the future work.

Q Why would you do that?

A If I knew that there were supposedly qualified steamfitters available, I would suggest that they interview them and if they found them qualified, that they hire them, and when they refused to do this, we would then start these proceedings.

Q How many minority steamfitters were you able to place in the course of your period of time with HBA in the steamfitting industry?

MR. FLEISCHMAN: I object to the question.

THE COURT: How many were placed if there were any placed?

THE WITNESS: I am not sure of the exact number. I would guess, through my efforts, about eight or ten.

Q Did steamfitters or minority steamfitters contact your office when they were seeking work?

A Yes. After we had some success in placing

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Attorney-direct

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2 standardize and other mechanics, you know, the word spread
3 and people come in.

4 Q How many contacted your office in the course of
5 the time you were with EDA?

6 A I am not sure. I guess between fifteen and
7 thirty, I guess.

8 Q When you would ask these contractors to place the
9 amendments, what kind of response would you get?

10 A They usually would say, "We have to go through
11 the Mechanical Contractors Association."

12 MR. FLEISCHMAN: I object.

13 THE COURT: I think that is pretty general.

14 Did you have any conversations with contractors?

15 THE WITNESS: Yes.

16 THE COURT: Tell us about your conversations with
17 them and what they said.

18 THE WITNESS: I would call them on the phone and
19 say, "Look" --

20 MR. SHAW: Your Honor, this is hearsay.

21 THE COURT: I know, but I will let her tell us
22 for the purpose of this.

23 When you called up --

24 THE WITNESS: I called the contractor --

25 MR. SHAW: I wonder if we could have an

1 name Stephen-Linnet

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2 Identification as to the, your Honor?

3 THE COURT: All right, if you can remember.

4 THE WITNESS: I don't remember names of companies--
5 Arco Engineering, Chandler, Burley, Senate -- I don't
6 really remember the names.

7 THE COURT: All right.

8 THE WITNESS: These are some of them.

9 THE COURT: Tell us what usually happened when
10 you telephoned the contractor.

11 THE WITNESS: I would say, "Your minority
12 representation on such-and-such a site is inadequate," and
13 I would also check their overall minority representation that
14 was usually inadequate, and say, "You have to do something
15 about it."

16 He would say, "There are not any available. What
17 am I going to do?"

18 THE COURT: He meant there were no minority
19 steamfitters available?

20 THE WITNESS: Yes. If I knew of any supposedly
21 qualified men, which I usually did, I would say, "I know
22 so-and-so, who came into my office yesterday and claims to
23 be qualified. Would you please interview this man and if
24 you feel he is qualified, hire him?"

25 The contractor usually would say, if he were a

Name:

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Q Did you keep records when employed by the Housing and Development Administration of the City of New York?

A Yes.

Q Did these records relate to conversations with employers regarding failure to meet --

A Yes, sometimes.

Q -- what we might call goals?

A Yes. I am afraid I didn't document everything as I should have, but I did keep records.

Q Did you keep records of minority persons who were available for employment?

A Yes.

Q To the best of your knowledge, are those records still there?

A Yes.

MR. FERNSTEIN: I have no further questions.

CROSS-EXAMINATION

BY MR. SHAW:

Q Are those records available in the courtroom now?

A I don't know.

Q What?

THE COURT: You don't have them?

THE WITNESS: No.

11:45:00

2: 11:45:00

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1 MR. WATSON: I don't have them, for the record,
2 your Honor.

3 Q Can you give us the date of any specific
4 conversations you had with any specific employer?

5 A No, I can't.

6 Q Can you give us the approximate date of any
7 specific conversation you had with any specific employer?

8 A I started working there in October 1969 and I
9 left last September and I was talking to contractors the
10 whole time.

11 Q Talking with contractors throughout the
12 construction industry?

13 A Throughout those three years. I can't give you
14 specific dates of specific phone conversations.

15 Q Without reference to dates, do you remember any
16 specific conversations with any specific steamfitter
17 contractors?

18 A Well, I remember fairly well a whole series of
19 conversations with Avco Engineering.

20 Q Who at Avco?

21 A Mr. Jerry Royer.

22 Q What was the substance of those conversations?

23 A The representation on a certain site was
24 inadequate --

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Shelton-Cross

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Q What was the site?

A I don't remember the site. I called and said, "It is inadequate, you have to do better."

He said, "He don't have any."

And I remember this quite clearly because three people had recently come into my office, three steamfitters, who claimed to have fifteen years experience, and I said, "Would you interview and if qualified hire one or more of these people?"

He said he would have to go through the Mechanic Contractors Association.

I called Mr. Hopkins, I believe, or it could have been Mr. Canavan, and as always happened --

Q No, please.

THE COURT: Tell us what happened here.

A He said something like, "Call me next week. Let me know next week."

I then found out by talking to the steamfitters that they had been involved with the Mechanic Contractors Association for almost a year in trying to get placed on jobs.

We were stopped at this point and had to bring --

Q Who were these steamfitters?

A Cromwell Mills, somebody Tyson, Rupert Deballotte,

11/11/72

D-1111-1111-1111

681

1 D-1111-1111-1111-1111, I think is the spelling.

2 Anyway, we didn't get any satisfaction through
3 the Mechanical Contractors Association in placing these
4 men on jobs.

5 We had to bring disqualification proceedings
6 against Avco. At this point, Avco put the men to work.

7 Q Three three men?

8 A Yes. I am not sure if it was all three, but
9 eventually he hired all three of them, but it was only
10 after we brought those disqualification proceedings.

11 Q Against Avco?

12 A Against Avco.

13 Q Do you remember any other specific instances
14 than the one you just described?

15 THE COURT: I think that is sort of broad. You
16 mean instances --

17 Q Instances you referred to in which you called
18 scamfighter contractors.

19 THE COURT: Did you start any disqualification
20 proceedings against anybody besides Avco?

21 THE WITNESS: Yes. I am pretty sure of this:
22 I think it was Paul Chandler. I don't think they are
23 members of the Mechanical Contractors Association, but I
24 am not sure.

17 18

Stefan: - cross

592

Q Can you remember any other than those two?

A No, no disqualification proceedings.

MR. SHAW: No further questions.

MR. WELSH: Your Honor, I have no further questions but Mr. Harris wants a few seconds.

(Pause)

MR. SHAW: I might ask, while Mr. Harris is doing that:

Q Are you familiar with the hiring of 100 minorities--

A Yes.

Q -- by the subcontracting industry?

A Yes.

Q Through the efforts of HCA?

A That was after the lawsuit was filed.

Q I didn't ask you that. Are you familiar with that?

A Yes.

Q Do you know of any other industry in the construction trades in New York City that has hired a hundred or anything like a hundred minorities?

A No.

MR. WELSH: Objection, your Honor.

THE COURT: All right, she answered it.

1000 Southern District Court

622

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1000 Southern District Court

Q Do you know when the hundred minorities were

1000 Southern District Court

A I thought as a result of this lawsuit.

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1000 Southern District Court

THE COURT: Any more questions, Mr. Fleischman?

MR. FLEISCHMAN: No, your Honor.

THE COURT: All right. Thank you, you are

excused.

(Witness excused.)

MR. HENDER: Plaintiffs' call Mr. Jewel Steel.

Q J E W E L S T E E L. Called as a witness by the

Plaintiffs, being first duly sworn, testified as

follows:

EXHIBIT EXHIBITION

AT MR. HENDER:

Q Mr. Steel, would you state your address, please?

A 500 Castle Hill Avenue.

Q Where is that?

A Bronx.

Q Are you married?

A Yes.

1 bme 3 Bright - direct

738

2 A No.

3 Q Blueprint reading, have you used that on the job?

4 A I don't use it, but the foremens use it.

5 Q The basic mathematics that you mentioned, have you
6 used that on the job?

7 A Not the math we learned in school. We use arithema-
8 tic.

9 Q The mechanical drawing, have you used that on the
10 job?

11 A About once or twice when the foreman wants you to
12 make a sketch on how some pipe is going to be run, the
13 mechanical sketch, which would cover, like, mechanical drawing
14 I have seen my partner use it about twice.

15 Q And the welding, have you used that on the job?

16 A Yes.

17 Q Have you had any trouble with whites on the jobs?

18 MR. FLEISCHMAN: I object.

19 THE COURT: I will sustain the objection to the
20 form of that.

21 Q Have you encountered anything that you would charac-
22 terize as resistance to your being an apprentice from whites
23 on the job?

24 A A couple of times.

25 THE COURT: Over what period of time?

1 bme 9

Bright - direct

739

2 THE WITNESS: I would say there were about two
3 incidents since I have been in the apprenticeship.

4 THE COURT: That is in four years.

5 THE WITNESS: Yes.

6 Q Could you tell us about those instances?

7 A The first incident was when I first came into the
8 trade in 1969. I got into a dispute on the job at Southeast
9 Bronx High School. I was told to unload a truck with cast
10 iron radiators by myself and the other steamfitters on the
11 job at that point refused to, like, work with me. So, like,
12 head of the apprenticeship was called to the job.

13 Q Did the head of the apprenticeship come to the job?

14 A Yes.

15 Q What did he say when he arrived?

16 A He told me that I was wrong and not to cause
17 trouble.

18 Q Were you given a partner to work with on that truck?

19 A No.

20 Q The other steamfitters on that job, were they
21 white?

22 A Yes.

23 Q Were there any blacks on the job as steamfitters?

24 A At that particular time, no.

25 Q You mentioned there were two incidents. Was there

1 bme 10 Bright - direct 740
2 another incident?

3 A On Sands--the other incident, I was down the base-
4 ment with a welder named Frank--I don't know his last name--
5 and he would have me lift his--like we working on a line in the
6 sub-basement and he would like weld nipples for, like, you
7 know, valves into the line and he would have me hold the
8 nipples in position while he tacked them and in this process my
9 fingers would be burned because I didn't know the exact pro-
10 cedure and he would like burn my fingers.

11 So, after a while, I refused to hold like the nipples
12 in place and after that he just started calling me some names.

13 Q What names?

14 A He called me a black bastard and a nigger and a
15 trouble maker. That was it.

16 MR. WAEGER: I have no further questions.

17 MR. GLASSMAN: No questions.

18 CROSS EXAMINATION

19 BY MR. BROOK:

20 Q Mr. Bright, you say you are a 4th year apprentice?

21 A Yes.

22 Q Did you take an examination to get into the program?

23 A Yes.

24 Q What is the current rate that you are earning?

25 A I think it is 5.26 an hour.

1 ppe 3

Bickel - direct

756

2 research methods.

Q Have you taught statistical analysis?

4 A Yes, I have.

5 Q Dr. Bickel, I am showing you a copy of Plaintiff's
6 Exhibit 133 in this case, which is further answers to written
7 interrogatories from the defendant Enterprise Association,
8 Local 638, Exhibit B, further answers to those interrogatories,
9 which is a group of documents stapled together, the top of
10 the first of which is a recitation that it is a night appren-
11 ticeship program.

12 A This is rather difficult the way it is stapled, but
13 this looks exactly like the list of membership rules for the
14 apprenticeship program in Local 638 since 1960 that I worked
15 with.

16 As far as I can tell, it is identical.

17 Q And the last of those indicates that it is through
18 the 20th program.

19 A Yes.

20 Q Then there is a 13th page, the top of which there
21 is the caption "Apprenticeship cancellation;" is that correct?

22 A Yes. That looks exactly like the list that I worke
23 with.

24 Q You say you are familiar with this, Dr. Bickel.
25 Could you tell me, please whether or not you have conducted

bmc 7

Bickel - direct

773

THE COURT: If the group were half as big as this, what would you say?

THE WITNESS: If the group were half as big as this-- there were two groups compared and it is the smaller group which is the critical one--if the group were half as big, 14 minority members instead of 28, in setting up the statistical test, that element, the size of the group, is one of the elements that goes into the statistical test and is precisely what is taken account of.

The type of testing I used is tests that are designed for small groups, so that in the tabulated results the effect of the size of the group is taken account of and is allowed for. There are other kinds of statistical tests that apply only if the group is a very large one. But the tests used here were designed specifically for small groups, and 28 is not terribly small within those tests. I mean, the cutting line for those tests is generally about 30. So this is a rather large small group.

Q I was going to ask whether the fact that there are only 28 minorities in the sample there was less statistical validity to your conclusion.

THE COURT: He answered that.

MR. HARRIS: All right, I will stop now.

5xmob

Bickel-redirect

795

1 A Yes.

2 Q What result would you get then?

3 A If --

4 Q What would the effect be?

5 A If other journeymen were being brought into the
6 program by some route other than the apprenticeship program
7 and if they were entirely or predominately white, that
8 would reduce the rate at which the minority membership would
9 grow and it would reduce the maximum level of minority
10 membership that ever could be attained.

11 Q On the basis of the projections that you make and
12 on which you have based your analysis, what is more
13 important in the long run, the entry level at which you
14 start or the entry rate as you proceed over the years in
15 terms of having the ultimate effect of increasing minorities
16 in the union?

17 A The question that was posed earlier in the
18 cross-examination, the hypothetical question, supposedly
19 started out with a union that was fifty-fifty --

20 Q Well, let's set that to one side --

21 A No, let me use that, because if then the entry
22 rate were increased by an additional 2 percent, clearly
23 when you reached your 2,009, where this increase
24 stabilized at a higher level of 52 percent, the initial
25

6rmeb

Bickel-redirect

796

50 percent, with the assumption that was maintained -- clearly it is that 50 percent that dominates the outcome.

On the other hand, if you started out with an initial proportion of minority members that were, say, 7 percent, which is more realistic, I gather, and then the additional increment of minority members was 2 percent each year, as well as maintaining the 7 percent, when one reached the stabilizing point, it would stabilize at 9 percent.

In this case, also, the initial proportion of 7 percent dominates because it is large, relatively, to the increased increment.

Is that a sufficient answer?

MR. YEAGER: I think that is sufficient for me.

No further questions.

RE CROSS EXAMINATION

BY MR. FLEISCHMAN:

Q Doctor, will you refer again to the answer to the interrogatories showing the drop-out rate?

A The answer to the interrogatories is simply listing the individuals and the dates they dropped out.

Q Now, I think it is Exhibit A, I notice that in 1970, there were two classes and that in 1971, there were no drop-outs at all of minority members.

1 jpeb Lewis-direct 801
2 Center.

3 Q What were you doing at the World Trade Center?

4 A Steamfitting.

5 Q Were you a member of Local 638 part of the
6 time you were at the World Trade Center?

7 A Yes, I was.

8 Q Prior to the bringing of this lawsuit, did you
9 attempt to obtain employment in the Steamfitting Industry
10 at any time?

11 A Yes, one time, in June of 1970.

12 Q Can you tell me about the circumstances in which
13 you made that application?

14 A When I went, I went to the Mechanical Contractors
15 Association on Park Avenue.

16 I was referred there from Lester Steiger. He
17 referred me to the Mechanical Contractors Association and
18 there I encountered with Mr. Hopkins, Roy Hopkins, or
19 Louis Hopkins.

20 He told me at the time that I can't get no work
21 because I would have to join the apprenticeship program,
22 and if I do go, the pay would be low for me because of my
23 age. I was overage to join the program.

24 THE COURT: How old are you, Mr. Lewis?

25 THE WITNESS: Right now, I am 39.

jpeb

Lewis-direct

802

Q Were there any efforts prior to the filing of your lawsuit that you made to become a member of Local 638?

A Yes. I wrote to the union to be a member of it.

Q What kind of response did you get to that?

A I didn't receive no response.

Q Prior to the bringing of this suit, could you tell me about the kind of employment that you had as a steamfitter?

A I was working as a freight clerk for Mr. Fred Clark, the president of the company. The name of the company is Urban Mechanical.

Q This Mechanical Contractors Association you talked to, is that the same as the Mechanical Contractors Association that is the defendant in this suit?

A Yes.

MR. SHAW: Objected to as leading, your Honor, and I move to strike.

THE COURT: Motion denied.

Q Mr. Lewis, how long were you employed at the Urban Mechanical Company by Mr. Clark?

A Approximately four months, I believe.

Q What kind of work did you do for them?

A Steamfitting work.

Q Prior to your employment there by Mr. Clark, could

jpa

Malone

1052

how qualified he thought he was, he would have to have that ticket.

THE COURT: You would ask who would have that ticket?

THE WITNESS: Yes. If he didn't have it he couldn't weld it.

THE COURT: Supposing you needed two welders and you found a dozen of them had a certificate, how would you select the ones who were going to do the work?

THE WITNESS: That's a question that is open to speculation on my part. I don't think, honestly speaking, there would be a dozen men sitting there with a ticket like that.

THE COURT: It didn't happen?

THE WITNESS: Not in my case. I wouldn't think so, no, sir.

BY MR. FLEISCHMAN:

Q Mr. Malone, do you hire welders, and then when the welding is over do you let him go, or do you transfer the people or the men from task to task?

A I would say it would be extremely difficult to hire men per se by saying are you a welder, are you a man that works on copper or shaft. The ultimate goal in any industry is to expect a man with the greatest

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How printed?

A I think it is a weekly. One day a week.
It comes out on a Thursday.

Q Mr. Kerr, how many apprentices are unemployed
at the present time?

A I have 12 apprentices unemployed.

Q How large is the apprenticeship class now?

A 367.

Q Do you have any estimate of the range of un-
employment among the apprentices, say, in the last few
years?

A Well, it varies. Some days there I would
have maybe 15 out of work; the next day I would have
maybe 12; then the following week I may have none out
of work. Then there would be layoffs and I would
have 15 to 20 the next week. It varies from one week
to the other.

THE COURT: What is the most in the last
few years of unemployed apprentices, and how many would
there be?

THE WITNESS: I would say 20.

THE COURT: Not much over 20 in the last
few years?

THE WITNESS: Yes, about 20.

b2a 7

Malone - direct

1066

would be the case. We have had cases where we wind down to almost, you know--well, where it gets very quiet. After the Second World War I would say this has not been the case and we have been pretty busy.

Q Have you had occasions where the skill or the work conditions are such that you require steamfitters to work out of the regular work day?

A Outside of--

THE COURT: You are talking about overtime?

MR. FLEISCHMAN: Yes, sir.

A That gets to be an involved procedure, speaking very factually. Most builders start out very; very optimistically and any legitimate superintendent of any large edifice at the present time in New York City, if you walk by after the first three months you already see the completion site date and the man doesn't have to be a construction man to realize that is a physical impossibility. It doesn't take any great purveyor to see that. By the time the steelman and concrete men have reached their finality which brings our process into operation we are already way behind, not at the fault of the steamfitters but because we--only so many people can fit into certain place at any time.

You couldn't put 200 painters in this courtroom and be finished in three minutes. It is a physical impossibility

Time is not expressable and it has to be spread over RM and

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bms: 3

Malone - direct

1057

FX amount of men must do a certain amount of work in X amount of time.

Q Is this overtime overtime as normally used or is it premium time?

A Along the terms of premium time, would be the fact that the contractor was finally liable for only one half and the owner-builder would pick up the other half, which is considered the premium time, which I am certain--this would be highly optimistic, or possibly pessimistic evaluation of the situation, but I assume 65 to 70 per cent of the overtime expended by the industry in any one given period is more than likely assumed by the owner-builder.

MR. SHAW: Your Honor, I move to strike that. I don't think the man has been qualified to give that opinion.

THE COURT: All right.

THE WITNESS: I didn't make a statement, your Honor. I said it might be highly optimistic or pessimistic, your Honor.

THE COURT: Let's go on.

Q Mr. Malone, you have worked on power houses?

A Yes, sir.

Q Do you have any operations in the power house that requires what would normally be called two shifts, that is, you have in the contract one shift, from 8 to 3:30, which is

927

Malone - direct

1063

the regular house--am I correct?

A Yes, sir.

Q And anything outside of that is--

A. Overtime.

Q Overtime or premium time, right?

A Yes, sir.

Q Are there operations in the power house where you require men to work outside of the regular shift?

A Many instances there are stress relieving processes not rolling processes .are it takes well beyond the point of normal working hours to bring the pipe to a certain heat, weld the pipe and bring the heat back down gradually. This involves the process you are speaking of at the present time.

Q Would these hours, overtime or premium hours, be required even though the men may not come in for the regular hours, that is, they are called for the second shift.

A This could happen, yes.

Q Has there ever been a time or have you had occasion to tell the men to start late because they couldn't get up to the job location on a job site?

A I would say there are many, many instances where the employees are to report Friday evening late or a Saturday or Sunday so that the work being done at that specific time, may be some kind of alteration, would not interfere with the tenor

1 bme 10 Malone - direct 1069
2 comfort during the day. The tenant looking for heat or air
3 conditioning doesn't care what other people on other floors
4 are doing and you have to do it at nights and Saturdays
5 which is premium time areas.

6 Q The men who receive this overtime pay will not have
7 worked on that particular day the regular hours?

8 A This is a possibility, yes, sir.

9 Q Are there occasions when there is a lack of trans-
10 portation to carry the man to a job location, that is, there
11 are too many trades trying to get up before the starting hours?

12 A The manpower or material?

13 Q Manpower.

14 Or material power or both.

15 A Materialwise happens to be probably the greatest
16 source of aggravation in most of the industries at the present
17 time. The amount of equipment supplied to the normal contrac-
18 tor to transport his material up to the areas or floors that
19 he needs, in 80 per cent of the time is inadequate, which
20 forces us into a Saturday hoisting or night time hoisting,
21 which is nothing tremendously rare, and this is a normal prob-
22 lem. They couldn't have enough hoists around the building
23 to supply the material to keep the whole building going.

24 Q Are agreements made between the trades to stagger
25 the starting time and quitting time because of this problem?

1 line 30

Brailion - direct

1093

2 Q Did you have any occasions where you were asked to
3 come in after 3:30?

4 A Yes.

5 Q Do you recall any jobs where that occurred?

6 A Yes. It happen with me with Courtney in Kennedy Air-
7 port. We had a special job to do and we could make it only
8 after 3:30.

9 And you were paid so-called overtime for that?

10 A Right.

11 Q And you had not worked the day shift of the same day,
12 had you?

13 A Yes. The job have to be done and the company call
14 the men who know how to do it.

15 Q And you reported after 3:30?

16 A Right.

17 Q And you received so-called overtime or premium pay
18 for that?

19 A You are telling me, yes, sir.

20 MR. FLEISCHMAN: That's all. No further questions.

21 CROSS EXAMINATION

22

BY MR. WEAGER:

23 Q Mr. Brailion, how much experience in the steamfitting
24 industry did you say that you had before the first time you
25 came to the United States actually doing the work?

Exh 21

Brailion - cross

1099

How many years was that?

A I think about 20 years--wait a minute--about 20 years.

Q Did that include construction steamfitting work?

A Construction steamfitter, and everything.

Q That was before the first time you came to the United States?

A Yes.

Q When was the first time you came?

A 1957.

Q How long did you stay that time?

A The first time I stay from 1957 to 1962, and they sent me in Columbia, yes.

Q Were you working for Tubeco during that first time you were here?

A No.

THE COURT: You worked for Citroen?

THE WITNESS: Yes.

Q What kind of work were you doing for them?

A Maintenance.

Q Then you came back to the United States in 1964, I believe you said, is that correct?

A No. I make two trip. I come back from 1963, starting to work for Tubeco, quit Tubeco, went to France, come back 1964.

Page 22

Braillet - cross

1100

1 Q How long was that first time with Tubeco?

2 A About six months.

3 Q Then you came back in 1964?

4 A Yes.

5 Q Then you returned to Tubeco?

6 A 1964 to 1966 working for Tubeco, yes.

7 Q At that time were you a competent construction steam-
8 fitter?

9 A No, I was in the B local, the pipe fabrication.

10 Q But you had 20 years of construction experience before
11 that?

12 A Not really the construction experience, but pipe-
13 fitter experience. You have a big difference between pipe-
14 fitter experience and construction experience.

15 Q You were at Tubeco for two years?

16 A Yes, from 1964 to 1966--not exactly two years.

17 Q During that period did there come a time when you
18 began doing construction work?

19 A No. From 1966 when I joined 638, but before I had
20 experience in the construction work overseas.

21 Q You did have that experience before?

22 A Overseas, yes.

23 Q Then you went directly from Tubeco to a construction
24 site?

Page 23

Brailion - cross

1101

A No. The Mechanical Contractor Association give me an opportunity to work for 638 in construction.

Q Did you work for someone else after Tubeco and before you started doing construction work?

A No.

Q You went right from Tubeco to construction work?

A Yes.

Q Did you have trouble on that construction site?

A Never.

Q What kind of work were you doing at that time?

A Everything.

Q Where were you?

A Esplanade Garden.

Q What size building was going up there?

A We have exactly about four 24-, 27-story building.

Q Where are you working now?

A In the Twin Towers, World Trade Center.

Q You are now a member of Local 638?

A Yes.

Q When did you become a member?

A 1966 or '67.

THE COURT: That is when you became an A member?

THE WITNESS: Yes.

THE COURT: You were a B member before?

p. 24

Stratton - cross

1102

THE WITNESS: Yes.

Q When did you become an A member?

A 1966, 1967.

Q You were a B member before that?

A Yes.

Q I am showing you a letter dated January 9, 1967, I believe which is part of Exhibit B to Plaintiff's Exhibit 132 in this action, which is the answers to interrogatories by the union.

Have you seen that letter before?

A Yes, I have.

Q And the signature--

A Is my signature.

Q Did you request membership in Local 628 at that time?

A Yes. And after that I have my book, when I requested it.

Q Did you receive your book immediately after you mailed this letter?

A About one month after--about one month after--about one month or two months after I receive my book.

Q Do you know a Mr. Ralph Newell?

A Yes, personally.

Q I am showing you a letter dated February 20, 1967, which is signed by Mr. Ralph Newell and which has your name in

1 bne 35

Brailion - cross

1103

2 it, addressed to the union.

3 Do you recall seeing that letter?

4 A I know the name of the three men, I know it.

5 Q Have you seen this letter before?

6 A I think so.

7 Q Did you authorize Mr. Newell to write it on your
8 behalf?

9 A I think so.

10 Q Before you wrote the letter that you signed, not the
11 one Mr. Newell signed, had you made any previous request to
12 the union to give you an A book?

13 A No.

14 Q That was the first request you made?

15 A The first request, and we had our book--I think so,
16 if I remember perfectly.

17 Q Maybe this will refresh your recollection.

18 Would you read the first sentence of the first letter
19 the one you signed?

20 MR. SHAW: That is in evidence--

21 A I don't know.

22 Q That recites you had been trying to get a book for
23 five months.

24 A That's right, from June to September.

25 Q By the time you wrote the letter you had been trying

Brailion - cross

1104

1 to get the book for five months, is that right?

2 A No.

3 (Pause.)

4 A It is possible.

5 Q I am showing you a letter which is also part of this
6 Exhibit B to Plaintiff's Exhibit 132, dated September 7, 1967,
7 through the City Commission on Human Rights.

8 Have you seen that letter?

9 A That's right, 82907 is my book number.

10 Q Your name is mentioned in this letter?

11 A That's right.

12 Q And that is a letter to the City Commission on Human
13 Rights?

14 A Yes.

15 MR. SHAW: What is the date on that?

16 MR. YEAGER: September 7, 1967.

17 A And we have our book in September 1967. I think it
18 was September 6.

19 Q The City Commission on Human Rights, do you know
20 what that organization is? Do you know what that is?

21 A No.

22 Q You have never heard of that organization?

23 A Yes, I heard.

24 Q What is the organization?

1 A Like you say, for human rights.

2 Q Did you ask the City Commission on Human Rights to
3 help you get a book from Local 638?

4 A If I sign the letter, I request it.

5 MR. YEAGER: No further questions.

XX

6 CROSS EXAMINATION

7 BY MR. HARRIS:

8 Q Mr. Brailon, you say you are employed on the World
9 Trade Center now?

10 A Yes.

11 Q How long have you been employed on the World Trade
12 Center?

13 A Since about 18 months, 18 or 19 months.

14 Q Do you remember last December--

15 A Yes, I remember.

16 Q December of 1971?

17 A Yes.

18 Q Do you remember there was a strike at the World Trade
19 Center for a few days?

20 A Yes.

21 Q Do you remember the ad hoc committee that was formed?

22 A Yes.

23 Q Were you a member of the ad hoc committee?

24 A Yes, I was.

Q

Wilson - direct

1129

Q Can you tell the Court of your experience with Mr. Clinton on that job?

A Well, Mr. Clinton was a first-year apprentice, I believe, at that time, and it happened to be that I was teamed up with him as a partner at that time.

So while I was doing my job at times he used to disappear. This happened many times. So I tell my foreman-- it was Jimmy Ross I believe--please to give me another partner because I cannot rely on Fred Clinton anymore. So he give me another partner, that's all.

Q Did you see Mr. Kerr on the job in connection with this problem?

A Yes.

Q And you spoke to him about it?

A About it.

MR. FLEISCHMAN: I have no further questions.

MR. HARRIS: I have none, your Honor.

CROSS EXAMINATION

BY MR. YEAGER:

Q Mr. Wilson, you are a member of the A branch, Local 632?

A Yes.

Q How did you become a member?

A I make my application to the Commissioner of Human

kme

Wilson - cross.

1121

Rights.

Q You filed a complaint with the Commission?

A Yes.

Q How long between the time that you got your card and the time you first asked the union to let you into the union--how long was the period of time between the time you got your card and the time you first asked the union to let you in as an A Branch member?

A I would say about six months.

Q You mentioned you saw Mr. Kerr on the World Trade Center site?

A Yes.

Q Did you see him talking with Mr. Clinton?

A At the time, yes.

Q They were talking together?

A Yes.

Q Did you hear what they were saying?

A No.

Q Had you seen Mr. Clinton talking with any whites at any time on the World Trade Center site?

A Oh, sure.

Q THE COURT: Wait a minute. Did he on the occasion of his testimony, which the witness has given in response to his conversation with Mr. Kerr--that the--you are asking if he

b2

Wilson - cross

1122

1 talked to any white?

2 Mr. WAGER: I will strike the question, your Honor.

3 Q Did you see Mr. Clinton talking to other whites on
4 the job site the day you saw him talking to Mr. Kerr?

5 A I can't exactly tell you the date, but he been talk-
6 ing with other steamfitters, also white.

7 Q Did you see him having any arguments with white
8 steamfitters?

9 A No.

10 Q At the time that you saw Mr. Kerr talking with Mr.
11 Clinton, was Mr. Clinton still your partner?

12 A Still my partner?

13 Q Was he your partner the next day, the day after
14 that?

15 A Exactly the next day, I wouldn't know, but in a
16 short time they gave me another partner.

17 Q Did you talk to your foreman the same day you talked
18 to Mr. Kerr or was that a different day?

19 A No, before I spoke to him.

20 Q Before Mr. Kerr came down?

21 A Yes.

22 Q Did your foreman tell you he was going to replace
23 Mr. Clinton when you talked to him?

A He didn't tell me anything.

b7c

Wilson - cross

1123

Q Did your foreman ever indicate to you why you were being changed--why Mr. Clinton was being taken from working with you.

A I think it was because of my explanation.

Q Did he tell you that, the foreman?

A He didn't tell me anything.

MR. YEAGER: I have no further questions.

MR. SHAW: No questions, your Honor.

THE COURT: Any other questions, Mr. Fleischman?

MR. FLEISCHMAN: Just one more, your Honor.

REDIRECT EXAMINATION

BY MR. FLEISCHMAN:

Q In connection with the safety factor on a job, to what extent are you--

MR. YAEGER: Your Honor, I was just wondering if that is related to the cross examination?

THE COURT: I don't guess it is, but I don't guess it makes much difference. I will give you a chance to cross examine on it if it is relevant.

Q To what extent are you dependent on a partner?

THE COURT: Well, I don't know, that is--

MR. FLEISCHMAN: I have no further questions.

THE COURT: Do you always have a partner when you work?

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Hopkins-direct

1129

Are some of those men pensioners?

MR. FLEISCHMAN: I object to the question.

THE COURT: I will allow it.

A I would say that between 2500 A men working most of the year, there are probably another six or seven hundred, 31, 32 hundred, that takes us to, that work a portion of the year.

Q But that is not my question, Mr. Hopkins.

A I am building in my mind --

Q All right. You go ahead and answer it.

I am coming to the 3300.

THE COURT: He is starting to get to the 3300. When you say workpart of the year, what do you mean by that? That that is their preference, to work part of the year?

THE WITNESS: That's right. They may be temporary service people; they may be men of an older age who like to work part of the year, or they may be men moonlighting or that may be their choice.

I'd say we go from about 2500 to 32, 33 hundred.

THE COURT: There are about 600 of those?

THE WITNESS: Yes, sir.

BY MR. SEAW:

Q Those men are accounted for in Exhibit 158, are

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Hopkins-direct

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they not, which shows in it, under construction trades branch, a series of hours worked by A men varying from less than 250 -- that is why I said 3200.

Q What about the balance of the A book men?

A Tom, I wasn't here the day Courtney made his presentation, so I don't know what's in.

Q Don't worry about that.

THE COURT: The question is, assuming this figure is correct, that we stipulated to, we are trying to reach a 3800 figure, and you have reached the people who are working a full year of some 2433. We get another 600 who you think want to work part of the time, so that brings you up to 3000.

I think what Mr. Shaw is asking you, what do the rest of the A book men between the 3000 and the 3850 do?

THE WITNESS: They are not available to us as a work force. I would have to deduct that they are pensioners or something like that. They are not available to us.

Q Are pensioners permitted to work?

A No, the part of the pension agreement is that they move from the business.

Q It was further established on the testimony of Mr. Courtney that there was a total of 4342 man-years

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Hopkins

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worked during 1971. Referring, if you wish to the exhibit before you, Exhibit 168, how were the rest of those man-years worked? By whom, apart from the A book men?

A You will have to give me a second to look at this.

(Pause.)

A The question again is what?

Q Who were the men, non-A book men, who worked all those man-years? We have 4300, approximately, man-years, and we have already established that a good deal less than that was worked by A book men. Who were the other men who worked?

A It would have to be permit men.

Q Permit men?

A Got to be.

Q Are the permit men a stable work force in the industry?

THE COURT: I don't know quite what that means.

Q Is there a certain stability in their working, that is to say, do many of them work, or any of them work a substantially full year, or are they transients in the trade?

A Let's say that in negotiating a trade agree-

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Hopkins-direct

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1 THE COURT: I see. Then do you know how
2 long the permit men have been?

3 MR. SHAW: I think Mr. Hopkins can answer
4 the question, your Honor.

5 THE COURT: That is what I would like to
6 know.

7 THE WITNESS: As long as I have been around,
8 that is 10 years.

9 THE COURT: All right.

10 BY MR. SHAW:

11 Q From the standpoint of the industry, Mr. Hop-
12 kins, in your opinion, based on your experience and on
13 your position, do you think that it is desirable to
14 have more A men from the standpoint of the industry?

15 MR. FLEISCHMAN: I object, your Honor.

16 THE COURT: I don't know what that means,
17 Mr. Shaw. I don't know from what point of view you
18 are talking.

19 MR. SHAW: I am talking from the standpoint
20 of the employers.

21 THE COURT: All right. From the stand-
22 point of the employers, is it better to have more A men
23 than what?

24 MR. SHAW: Than permit men.

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Hopkins-direct

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THE COURT: All right. Based on your experience you can answer that question.

A Yes, sir.

Q In your opinion, Mr. Hopkins, how many more A book men would be desirable from the standpoint of the employers?

MR. FLEISCHMAN: I object, your Honor.

THE COURT: I think that is pretty speculative. Could you give such an estimate? Wouldn't that depend on the jobs and the amount of work and all that, Mr. Hopkins?

THE WITNESS: I stated before in the testimony before you, Judge, some months back, that I am a firm believer in that there should be a cushion between the A force and the number of men working, that is, the permit men should be two, three, four hundred, reasonably. But we are now talking 12, 14, 16 hundred people. That is unreasonable, in my judgment. I think the man in the union is--if I were there, I would consider myself entitled to that cushion up above, so actually it is, from the labor standpoint -- it's a good thing to have two or three hundred permit men available. From the employers' standpoint it is good. But when you take that number and go to 12, 15, 16 hundred and there are

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Hopkins-direct

1134

restrictions on the use of those men, then you have got a problem.

Q And that is the problem at the present time, is it not?

MR. FLEISCHMAN: I object, your Honor.

THE COURT: Is it the problem at the present time?

Q Is it the problem at the present time?

A As far as I am concerned, we are sitting here talking about 2500 men taking home two-thirds of the money and what we need is some more numbers and some more color. As far as I am concerned, that is what this is all about.

MR. FLEISCHMAN: I object to the answer.

THE COURT: He made his answer.

Q With respect to welders, Mr. Hopkins, is there a shortage of steamfitters who are capable welders, and has there been over the last year or so?

MR. FLEISCHMAN: I object, your Honor.

THE COURT: I will let him answer if he knows.

A Yes, sir.

THE COURT: On what is your answer based?

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Hopkins-direct

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THE WITNESS: On 10 years' experience on the job.

THE COURT: Yes, but there must be a little more than that. You say there is a shortage of welders. How did that come to your attention?

THE WITNESS: We have a shortage of manpower, and that is a facet of the business.

THE COURT: So you say you have a shortage of welders. Do you have a shortage of riggers and all kinds of these people?

THE WITNESS: A shortage of manpower.

THE COURT: So there is nothing peculiar about welders?

THE WITNESS: Welders is a tool of the trade which is one of the top-flight, one of the strong attributes of the business, and actually as an industry, to satisfy the requirements of the community and the users as an industry, management and labor, we have to have adequate and qualified and, in some cases, certified welders, and that number is not adequate.

BY MR. SHAW:

Q Do you, based on your experience with MCA and in the course of your duties -- have you ascertained an approximate ratio of welders to the total work force

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Hopkins-direct

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on various types of jobs? For example, let's take a power plant. What approximate ratio of welders is required to the total work force on a powerhouse job?

A Actually, if we are talking about the --

MR. FLEISCHMAN: Your Honor, I object to the question. There is no foundation laid.

THE COURT: Well --

MR. FLEISCHMAN: I don't know whether he is speaking on the basis of conjecture, whether he has any figures or anything.

THE COURT: I think that is true. I think we need a little more of a foundation. If we are going to talk about powerhouses, I think you might ask the witness what his experience has been in connection with the utilization of pipefitters in a power plant and where he gets his views as to the ratio of welders.

MR. SHAW: Let me put it this way, your Honor.

Q Mr. Hopkins, is it part of your duty in your capacity as secretary of MCA to ascertain and keep yourself aware of the need for welders and the different kinds of jobs upon which welders may be required? Is that part of your general duties?

A I'd have to know that, yes.

Hopkins-direct

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THE COURT: How do you accomplish that
way?

THE WITNESS: We maintain in New York City,
which is also under my direction, a chapter of the
National Certified Welding Bureau.

Q In fact, are you the secretary of the local
chapter of the National Certified Welding Bureau?

A Yes, sir. That bureau and the National
itself, and its standards, and you get a look at the
national picture, you begin to get a requirement. We
know that throughout BU manuals and what have you, and
must have that requirement of construction in our ap-
prenticeship program. We know that what I call power-
house of the Edison Company or the Long Island Lighting
Company, that a minimum, minimum of personnel on the
basis of a hundred is somewhere -- 30 would be low --
to be qualified in welding. And the commercial
the industrial-type buildings come lower than that.
Usually, you will hear some employers talking of
one to four or one to five, but if you get one to five,
one to six, one out of six should be qualified in the
area of welding. I'm not talking about certification;
I'm talking about the area of welding ability.

Q Are welders available in those percentages

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Hopkins-direct

1133

at this time for that type, those types of jobs in this area?

MR. FLEISCHMAN: I object. No foundation.

THE COURT: I will let him answer that question.

Q To your knowledge?

A No.

Q I show you Exhibit 163, which is Mr. Courtney's overtime study, and I will ask you first, you have examined this document, have you? I am referring now to the last page, the summary page of Exhibit 163.

A Computers and computer pages scare me at times. Go ahead.

Q Do you know what the last column of figures is on the summary page, which is the last page of 163?

A We are talking about overtime figures there I assume.

Q Yes. The last column over is the total overtime per quarter in 19 -- in each of the years shown, is that not correct?

A '71.

Q All right. At my request did you add up the total overtime hours as shown in Exhibit 163 for the

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Hopkins-direct

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year 1971?

A Yes, sir.

Q How many total overtime hours did you get?

A 724,172.

Q Referring to Exhibit 163 for the year 1971, what is the normal full year? We have reference to 1750 hours, is that correct? That would be a full year, 50 weeks times seven hours?

A Thirty-five hours a week, yes.

Q Looking at the overtime hours that were accumulated by the A branch people, how many A branch men worked more than 2000 hours in the year 1971?

A 1702. Those aren't my figures.

Q No. In your capacity of being trustee of the education fund, you are familiar with the apprentice program for the industry here in New York, are you not?

A Yes, sir.

Q It has been stipulated that Mechanical Contractors Association sought classes totaling 10 apprentices in 1966, 150 in 1969 and in the 1972 negotiation sought 300 apprentices a year.

Did you participate in the decision to make those requests of those numbers of apprentices?

A Let me go back. Three hundred in '72; '69,

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Hopkins-direct

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Q 150.

A Yes, I did.

Q With particular reference to the request which is double the previous request in 1972, will you tell the Court why, or the reasons why the decision was made to ask for 300 apprentices in January of this year?

MR. FLEISCHMAN: I object, your Honor.

THE COURT: I will let him answer that.

A Two reasons come quickly. There may be others. One, we, the employers, and I believe we, labor and -- if I may speak -- believe in the main that the apprenticeship route is the best, and we believe in our program and we think it is doing a good job, and therefore we believe that people coming into our industry for a year should come through the apprenticeship program. That is one.

Two, the numbers go up because our stable work force available to us is not satisfactory.

Q That is to say it is too small?

A Sure.

Hopkins - direct

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1 And is there in your judgment and that of the Mechanical Contractors Association ample room for at least 300 apprentices a year in the industry?

2 A Yes.

3 Q With reference to minority, young men who are black or Spanish surnamed, what is your opinion with respect to the desirability of their going through the apprenticeship program?

4 MR. YLAGER: Objection.

5 THE COURT: I don't quite understand that question.
6 If the question is in the endeavors to recruit 300 men for the
7 apprentice program and you wish to comment on your experience
8 as to blacks, I think I will let you do that. You want 300
9 men and you don't care whether they are black or white or
10 anything else, do you?

11 THE WITNESS: Yes, we do. We have a State Law to comply with.

12 THE COURT: Of course that is right, but the point is, you want to meet the State law but what you are trying to do is train qualified people regardless of what their color might be, isn't that right?

13 THE WITNESS: That's right.

14 THE COURT: That is what I thought. I thought that was the purpose of--

15 MR. SHAW: My purpose was a little different, your

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Hopkins - direct

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2 Honor.

3 Q In your judgment, is it advantageous to the black or
4 Spanish surnamed boy himself to go through the apprentice pro-
5 gram?

6 A Yes.

7 Q Why?

8 A First of all, the requirements of our business, and
9 you have heard some excellent foremen and excellent mechanics
10 speak from this stand--the requirements of the job, the pro-
11 fessional requirements, the day-to-day requirements, A, they
12 must be--is a period of indoctrination in particular for the
13 black or Spani surnamed, that is, a period of learning and
14 indoctrination, and what have you, instead of coming in cold at
15 the journeyman level.

16 Next, until we as a community find the answer to
17 properly, if I may, educate minorities, and qualified, then
18 we better have them come through there because it is not only a
19 period of education in a business, it is a remedial education,
20 and eventually will be part of something permanently, for live,
21 and he will have the ability to stay there, whereas coming in
22 off the street, if I may use the term, at a later age, it is
23 tough.

24 Simson Wilson and Draillon I brought in in 1966 and
25 they were top flight, qualified people and it is a compliment

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Hopkins - direct

1143

2 to the both sides of the table that they sat here, but that
3 doesn't come down the plank every day in the week.

4 THE COURT: Well, you would certainly say if some-
5 body else came with training equivalent to these men that you
6 have been talking about, suddenly arrived in New York from the
7 Islands or Texas or somewhere else and you need men, would you
8 require them to go through the apprentice training program?

9 A No, is the answer to that, but I thought we were
10 talking about ideals over a long haul.

11 MR. SHAW: My question was directed to the untrained
12 person who would be a steamfitter.

13 THE COURT: What threw me off is that if they are
14 young and untrained, you would put them through the training
15 program; if they were middle aged and untrained, you feel they
16 couldn't make it anyway, is that it?

17 THE WITNESS: Some of them can make it, Judge, but it
18 is a precarious route.

19 THE COURT: All right.

20 THE WITNESS: Brailon and Wilson will make it, some
21 others I have will not.

22 BY MR. SHAW:

23 Q Based upon your experience in the Navy, Mr. Hopkins,
24 are you familiar with the kind of work that the Seebes,
25 construction work that Seebes do?

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Hopkins-cross

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MR. FLEISCHMAN: I object.

THE COURT: You asked him that question.

MR. FLEISCHMAN: I didn't ask him about conditions of the industry forcing them out, et cetera.

Q Do you know whether J. L. Murphy & Company are laying off engineers and draftsmen?

A In the heating department, I don't know that. As I said, they haven't been doing too much in our area in the last --

THE COURT: I wish you would frame a question in a way so that the record doesn't look as if you know about these situations and the witness doesn't know anything about them at all.

THE WITNESS: I'm not --

MR. FLEISCHMAN: There is no question pending. I have no further questions.

MR. HARRIS: I have one, your Honor.

CROSS EXAMINATION

BY MR. HARRIS:

Q Mr. Hopkins, I believe the Court asked you a question, which was whether or not there was more team-fitting work going on now than there was in 1963. I am not sure I got the answer. In terms of man-hours, where there is more or less going on now than there was in '63?

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Hopkins-cross

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A 1971 is the last accurate figures I have studied, and that is far in excess of '63, if you are talking about man-hours. Dollar volume doesn't have the direct ratio, but man-hours, yes.

MR. HARRIS: No further questions.

MR. YEAGER: No questions.

REDIRECT EXAMINATION

BY MR. SHAW:

Q Mr. Hopkins, I show you a document on the letterhead of New York and Long Island Chapter of the National Certified Pipe Welding Bureau, a memorandum to all members. Subject: List of currently qualified members, dated January 1, 1973. And I ask you if you can identify that or explain what that document is.

A This is a piece of correspondence sent by the assistant secretary of the chapter of the Certified Welding Bureau to all its members, in which it encloses a list of the certified welders within the jurisdiction of 638.

Q How many names are there on the list?

A I would guess it's in the neighborhood of 250.

MR. SHAW: I offer the list in evidence, your Honor.

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Hopkins-redirect

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MR. FLEISCHMAN: No objection.

THE COURT: All right. It will be received.

(M-A Exhibit 1 was received in evidence.)

BY MR. SHAW:

Q Are you familiar with the ratio of certified welders to steamfitters in other areas in the country, for example, Chicago?

A Yes, sir.

Q What is it in Chicago?

MR. FLEISCHMAN: I object, your Honor. There is no foundation.

THE COURT: I will let him answer it, if he knows.

A The Chicago local, UA local, has about 4500 active members and on that basis they have about 1200, 1250 certified welders.

THE COURT: Why do you say on that basis?

THE WITNESS: That is the percentage -- I mean to us there is a ratio of the active members of the labor force and how many of the force are qualified certified welders. There is about 4500 members and about 1250 are certified welders.

Q In your opinion, based on your experience and

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Hopkins-radiirect

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in your experience with the National Certified Welding Bureau, is that a desirable ratio for the industry?

A Yes, sir.

MR. SHAW: No further questions.

REGROSS EXAMINATION

BY MR. FLEISCHMAN:

Q Mr. Hopkins, do you know what the code is in Chicago with respect to the requirement as to certified welders on jobs?

A Do I know what the code is in Chicago for certified welders --

Q That is, I understand there are codes which say that on this particular --

MR. HARRIS: Objection. I don't want to know what Mr. Fleischman understands, your Honor. I think if he wants to ask a question he ought to ask a question. He should define what code he is talking about. Ordinance or statute or whatever.

Q Let's go back to New York when a job is under construction. The plans and specifications in some instances require the use of certified welders, is that correct?

A Correct.

Q Sometimes certified welders are required by

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Hopkins-recross

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A No, sir. In fact, in that certified pool there you will only find about 60 apprentice graduates and you will find approximately 100, 125 minorities that came in off the street.

Q In this particular exhibit you have a list of names and Social Security numbers next to that and the procedure and when their certification expires. Does this certification hold when an employee who is certified moves from one job to another?

A Does the certification hold if the person moves from one job to another? If under the same employer, yes.

Q And if he moves to another employer?

A If the employer is a member of the chapter he is in the pool. If the employer is not a member of the chapter the answer is no. That is, the certification moves from employer to employer. It doesn't move with the man, usually.

Q Have the employers ever put on a drive to get qualified welders to take the certification test?

A Yes.

MR. YEAGER: Objection.

THE COURT: He can answer. He says they have.

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Miller-direct

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approximately?

A April, '72.

Q When you started on that job how many people were on that job, steamfitters?

A There was about five, about, on this job.

Q Five other steamfitters besides yourself?

A Yes.

Q Had you worked there steadily up until Tuesday?

A Steadily.

Q Other than the strike?

A Other than the strike, steadily.

Q What kind of work were you doing during that period of time?

A I was a certified welder at that time.

Q Were you doing welding work?

A Welding. I was doing welding work.

Q Did you do any rigging?

A Well, not much. Yes, a little rigging.

Q Did you read blueprints on the job?

A Yes, I did.

Q When you say you are a certified welder are you speaking about a Con Ed certification?

A No, both. Mechanical Contractors certifica-

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Miller-direct

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tion, Con Ed certification.

Q Is the Con Ed certification a different certification?

A It is.

Q Is that required for Con Edison jobs?

A It is required for all Con Ed jobs.

Q Do they give you a test for that?

A Three times.

Q And you passed the test?

A Right.

Q In fact, does Con Ed run a school to help people take the test?

A Yes.

Q Did you have to go to the school?

A No.

Q When you started on the job who was your partner?

A My partner was Danny Mannion.

Q What is his title now?

A His title now is shop steward.

Q How long were you his partner?

A I have been Danny's partner about three months.

Q And then after that were you working with somebody else?

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Miller-direct

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1 A Yes, I was.

2 Q Who was that?

3 A Jim Levy.

4 Q Who is Jimmy Levy?

5 A He was my last partner.

6 Q Is he a member of the A branch?

7 A Yes.

8 Q Or the B branch?

9 A The A branch.

10 Q What kind of work were you doing with Jimmy
11 Levy?

12 A I was doing welding while Jimmy reads the
13 print.

14 Q Is Jimmy Levy black or white?

15 A He is white.

16 Q During the time you were working up until
17 last Tuesday were men coming onto the job?

18 A Oh, yes.

19 Q And did the work force get bigger?

20 A Yes.

21 Q And in fact, as of last Monday, say the day
22 before you were laid off, how big would you estimate the
23 work force was on that job?

24 A A hundred men.

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Miller-direct

1172

Q Who is the contractor on that job?

A Courter Company.

Q Out of that 100, about how many would you say were black?

A Say 20. When you say black what do you mean? Minorities together on a whole.

Q Minorities is a different definition, so I meant black, meaning negroes.

A Negroes, well, say, about eight.

THE COURT: What did you mean by the other 12?

THE WITNESS: They are all Puerto Ricans, Spanish-speaking people.

THE COURT: There might have been 12 of those and eight blacks?

THE WITNESS: Eight blacks, yes.

Q Were you only speaking of Puerto Ricans, or were there other kinds-of minorities?

A Other kinds of people, like Italians, et cetera.

Q There were about eight blacks, you say?

A Eight blacks.

Q Was there a layoff on the job on Tuesday?

A Yes, there was.

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Hiller-direct

1173

Q How many men were laid off?

THE COURT: If you know.

A Eighteen.

THE COURT: Eighteen were laid off?

THE WITNESS: Right.

Q How many of those were black?

A Six. Six was black.

Q Of the blacks working on the job, how many, do you know, if you know, were in the A branch? This is prior to the layoff.

A Four.

Q How many A men who were black were laid off?

A Were laid off?

Q Yes. In other words, of the blacks laid off, how many of them were A men?

A Four.

Q The other persons who were laid off, were they whites?

A They was whites.

Q Do you know whether they were in the B branch or A branch or what?

A I spoke with quite a few of them and they said

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Miller-direct

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they were all in the B branch.

Q How did you learn of the layoff?

A 2:30 Tuesday afternoon I was told by my foreman that I am supposed to report to the leading foreman, which is Bob Smith.

Miller - direct

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Q And what did you report to Bob Smith?

A I reported immediately to Bob Smith.

Q What were you told?

A I was told that I have been laid off because there wasn't enough of work.

Q Did you have any further conversation with Mr. Smith?

A Well, I try to get the supervisor's phone number, the business agent's phone number so that I could get in contact with these people. I was given these phone numbers and then I spoke with Danny Manion, the shop steward, and he told me why I have been laid off, there wasn't enough of production going on.

THE COURT: There was not enough production?

THE WITNESS: Enough of production from the men on the job.

THE COURT: It wasn't lack of work, it was lack of production?

THE WITNESS: Lack of production.

Q Had he ever complained to you before that you were not producing?

A Never did.

Q Had the foreman ever complained to you that you were not producing?

A Never did.

Miller - direct

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Q What did you do after you spoke to the shop steward and the foreman?

A I didn't get that question.

Q What did you do next after you spoke to the shop steward and the foreman?

A Well, I was offered my pay, and I refused it.

Q Did you speak to the superintendent?

A I didn't speak with the superintendent, but I tried to get the superintendent on the phone.

Q And he wasn't there?

A He wasn't, no.

Q Did you speak to--who is the business agent there?

A Donnelly. I gave him a phone number to call me.

Q How did you do that?

A I went to the Union Hall and reported the matter to the receptionist.

Q When did you go to the Union Hall, was that the same day?

A The same day.

Q When you got to the Union Hall, who did you see?

A I John Sheeran.

Q What did you tell Mr. Sheeran?

A I told him I was laid off and I didn't know the reason for it.

Page 1

Miller - Direct

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Q Did you tell him anything else?

A No.

Q What did he tell you?

A He told me to write my name on a piece of paper for Donnelly to call me back.

Q Did Donnelly call you back?

A Never did.

Q Has the foreman called you back?

A Never did.

Q Has the superintendent called you back?

A Never did.

MR. HARRIS: No further questions.

MR. YEAGER: I have no questions of this witness, your Honor.

CROSS EXAMINATION

BY MR. FLEISCHMAN:

Q Mr. Miller, since January of 1972, have you worked steadily?

A January '72? No, not until April, I start working.

Q From April on, up to July 1, when the strike began you worked steadily?

A Steadily.

Q When the strike ended you went back to work?

A Right.

SOUTHERN DISTRICT COURT REPORTERS

UNITED STATES COURT HOUSE

FOLEY SQUARE, N.Y., N.Y. 10037 TELEPHONE: CORTLAND 7-4530

Brown - Direct

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Q Did you go to the office?

A Yes, I went into the office and I see Bob Smith and I explain that I was told to be in his office by 2:30 and I would like to know what is happening.

He said, "You are laid off?"

I asked "What is the reason?"

He said, "You are laid off. Here is your envelope" and I said I wouldn't accept my pay until I get to understand what I am laid off for.

THE COURT: What did he say?

THE WITNESS: No answer. He just say "You are laid off." So I get out of the office.

Q How many people were on the job when you first started last May?

A About 67.

Q About how many people would you say were on the job just before you got laid off?

A Well, I say about a hundred.

Q After you left the job site, did you do anything else?

A Yes, I went to the Local 638.

Q Did you go with anybody else?

A Yes, Mr. Miller was there with me.

Q Did the same thing happen to you that happened to

10

Brown - direct

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11 Mr. Miller?

12 A Yes, sure like that.

13 Q Who did you talk to?

14 A Well, I talk to--I don't remember his name, but a
15 gentleman was there and I talked to him and he says to leave
16 my name and my telephone number and he will make someone call
17 me, and no one called me until now.

18 MR. GLASSMAN: No further questions.

19 THE COURT: Was that Mr. Sheeran?

20 THE WITNESS: I am not certain, but I think so.

21 THE COURT: It sounds like that.

22 THE WITNESS: Yes.

23 Q No one has called you since that time?

24 A No, sir.

25 MR. GLASSMAN: No further questions.

26 MR. VERGER: No questions.

27 CROSS EXAMINATION

28 BY MR. FLEISCHMAN:

29 Q Mr. Brown, I show you Exhibit M-A and I ask you
30 whether you find your name on this list?

31 I believe it is alphabetical.

32 MR. GLASSMAN: Objection, your Honor. The list
33 speaks for itself.

34 THE COURT: I would think it would. I don't quite

Q Would you speak a little louder? I don't know if everybody can hear.

THE COURT: You say you became an A member last January pursuant to court order?

THE WITNESS: Yes, sir.

Q Where was your last job?

A At the power plant in Astoria.

Q Is that the same job the other two gentlemen just testified about?

A That's right.

Q When did you start working on that job?

A I start as of April last.

Q How many people were on the job when you started working?

A When I start there, it was eight men on the job.

Q What kind of work did you do on the job?

A I am a welder.

Q Are you a certified welder?

A Yes, both by the Mechanical Contractors and by Con Edison.

Q You passed the Con Ed test?

A Yes.

THE COURT: You were certified by both Mechanical Contractors and Con Ed?

1 201 16

Bailey - Almost

1120

2 THE WITNESS: Yes.

3 MR. HARRIS: The name Winston Bailey appears on
4 page 1 and the name Cedric Miller appears on page 5 of Exhibit
5 N-A, your Honor.

6 THE COURT: All right.

7 Q Were you laid off at the same time the other gentle-
8 men were laid off?

9 A Yes, I was.

10 Q Is there anything you can add to their testimony
11 as to how you were laid off or who you spoke to, other than
12 what they said?

13 A I was told by my foreman about 1:30--

14 MR. FLEISCHMAN: Your Honor, I can't hear.

15 THE COURT: Please read the reply so far.

16 (Record read.)

17 A He told me I got to go see the general foreman in
18 the office. I went over there 2:30 and I went into his office.
19 There was many men standing around. So he didn't say any-
20 thing to me, just hand me my envelope. Before he got to me
21 he went to Cedric Miller and he said--Cedric Miller asks him
22 why, and he said he cutting down the work force, and he hand
23 me my envelope and Cedric refused his and I say I am sticking
24 with them and I refused mine too. At that stage I went out
25 of his office.

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Bailey - Direct

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Q Did you speak to any other persons about this?

A Well, the shop steward, he couldn't be found. I looked for him but couldn't find him.

Q Who is he?

A Danny Manion. I then called John Phee, I think it is--

Q Who is Mr. Phee?

A The general foreman or superintendent for Courter & Company. I called him and he wasn't in. The lady told me to leave my number and he would call me. But he didn't. I called at his house at 10 and he wasn't in. I wait until the next day and call about 7 o'clock in the morning and he knew me so I ask him if he remember me and he say yes. I said, "I got laid off yesterday and I don't understand what I get laid off for because men is coming on the job."

I don't know if it is all right for me to use the phrase he used, but he said something to the effect that he couldn't get production on the job. So I then ask him, "I guess you don't have any other job anywhere?"

And he said no and that was that.

Q What time did you show up for work every day?

A About 10 minutes to 8, five minutes to 8.

Q How late did you work?

A About a quarter after three.

Q Did you work during those hours except for lunch?

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Bailey - Direct

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1 A Right.

2 Q Had anyone ever complained to you that your pro-
3 duction wasn't sufficient?

4 A No, no one did.

5 Q Did all the other men always arrive at five of
6 eight?

7 A Sometime men would come in late, about 8 o'clock,
8 five after 8, but the guy standing there to give the brass
9 out. But lunch time, if you can go to the shanty quarter to
10 one--you supposed to go back to work at 12:30, but quarter
11 to 3 the guys would be around playing cards and I don't play
12 cards, so I don't stay around.

13 Q As of last Tuesday, was the job at the power plant
14 nearing completion?

15 A Well, I wouldn't even say it was really started
16 yet, because they have all the pipe laying on the ground, out
17 in the field. So it is the early stage of the job. That is
18 why I thought it was funny because I got laid off, and also
19 the other guys.

20 Q Were there any men coming on to the job?

21 A Yes. They were there three on Thursday, this week--
22 no, last Thursday.

23 Q A week from yesterday?

24 A Yes.

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Dailay - direct

1192

Q Prior to that had new men come on to the job?

A Yes, almost every two or three days we see a new face around.

Q Did you know any of these men?

A Well, from way back in December there were some guys I used to work with on the other power plant in Northport, and they came on the job.

Q Was Northport a Courter and Company job?

A Right. I was on that job.

Q When did you work on that job?

A During December of '71.

Q And you say some of the men that came on this job--

A They were on that job.

Q When you left the Northport job it had not ended?

A No, but it is coming to a close, because most of the buys is coming there on this Con Ed plant. As a matter of fact, I talked to one of the guy and asked him if some other men was there, and he said they would probably be around soon because they were just closing up at Northport.

MR. HARRIS: No further questions, your Honor.

MR. KEAGER: No questions.

CROSS EXAMINATION

BY MR. FLEISCHMAN:

Q Just prior to your lay off a few days ago, what

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

IAN CAMPBELL, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 356 W 34
NEW YORK, N.Y..

That on the 1st day of March, 1976,
deponent personally served the within APPENDIX Volume I of II

upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

By leaving 1 true copy of same with a duly
authorized person at their designated office.

By depositing true copies of same enclosed
in a postpaid properly addressed wrapper, in the post office
or official depository under the ~~exclusive~~ care and custody
of the United States post office department within the State
of New York.

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

MARILYN WALTER
National Employment Law Project
Attorneys for Plaintiffs-Appellants, George Rios, et al
423 West 118th Street
New York, New York 10027

Ian Campbell

Sworn to before me this

1st day of March, 1976.

Michael De Santis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 1977

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

KENNETH KENNEDY, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 1171 STERLING PL.
BROOKLYN, NY.

That on the 2nd day of March, 1976,
deponent personally served the within APPENDIX.
VOLUME I OF II

upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

By leaving 1 ^{copy} true/~~copies~~ of same with a duly
authorized person at their designated office.

~~By depositing~~ true copies of same enclosed
in a postpaid properly addressed wrapper, in the post office
or official depository under the ~~exclusive~~ care and custody
of the United States post office department within the State
of New York.

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

BREED, ABBOTT & MORGAN
Attorneys for Defendant-Appellee Mechanical Contractors
Association of New York, Inc. and Defendant-Appellees
Employer Members, Joint Steamfitting Apprenticeship
Committee
1 Chase Manhattan Plaza
New York, New York 10005

Kenneth E. Kennedy

Sworn to before me this

2nd day of March, 1976.

Michael DeSantis
MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 1978

Caill

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

VINCENT PANZA, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 2002 ELLIS AVE
BRONX, N.Y.

That on the 2nd day of March, 1976,
deponent personally served the within APPENDIX,
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upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

By leaving 1 ^{copy} true/copies of same with a duly
authorized person at their designated office.

~~By depositing true copies of same enclosed~~
~~in a postpaid properly addressed wrapper, in the post office~~
~~or official depository under the exclusive care and custody~~
~~of the United States post office department within the State~~
~~of New York.~~

Names af attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

THOMAS J. CAHILL
United States Attorney
Attorney for Plaintiff-Appellant,
Equal Employment Opportunity Commission
1 St. Andrews Plaza, New York, N. Y 10007

Vincent Panza

Sworn to before me this

2nd day of March, 1976.

Michael DeSantis
MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 1977

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

SCOTT ALVINO, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 5701 15th AVE
BROOKLYN, N.Y.

That on the 2nd day of March, 1976,
deponent personally served the within APPENDIX

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of New York.

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

TUFO, JOHNSTON & ALLEGAERT
Attorneys for Plaintiffs-Appellants George Rios, et al
645 Madison Avenue
New York, New York 10022

Scott Alvino

Sworn to before me this

2nd day of March, 1976.

Michael De Santis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 1977